

Nebraska Air Program Review

Federal Fiscal Year 2011

conducted by:

U.S. Environmental Protection Agency Region 7

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Kansas City, KS 66101

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For more information about this report, please contact Chrissy Wolfersberger, Nebraska air program coordinator, at 913-551-7864 or wolfersberger.chris@epa.gov

Background

Per the July 2008 *Program Review Guidance* established by the U.S Environmental Protection Agency (EPA) Region 7 defines a program review is a periodic, formal evaluation of a program. This review is generally considered a comprehensive evaluation, which looks at all aspects of the program. Typically states are authorized or approved to implement their own programs consistent with federal program. The evaluation results in a written report of findings, which may include what is working well, deficiencies, and/or recommendations for improvement.

Per Region 7's *Program Review Guidance*, a review of the Nebraska Air Program was conducted during Fiscal Year 2011. The purpose of this review was to evaluate of the air programs which are implemented by state and local agencies, for which EPA maintains oversight responsibility.

Portions of this review were targeted rather than comprehensive; the depth of the review is noted in individual portions of this document. This review covered:

- Permitting
- Small business compliance assistance
- Compliance & enforcement (State review framework)
- Air quality planning, continuing program grants, and rulemaking
- Asbestos
- Ambient air monitoring technical systems audit (will be conducted in 2012)

Current findings & recommendations

I. Air Permitting

EPA point of contact: Pat Scott

A. Background

On November 15 – 17, 2010, EPA Region 7 performed a focused evaluation of the Nebraska Department of Environment Quality (NDEQ) air permitting program's files for the natural gas pipeline interstate transmission compressor stations. We conducted the review: 1) to fulfill a regional office commitment with Environmental Protection Agency (EPA) headquarters to perform an annual comprehensive review of at least one state or local agency permitting program, 2) to satisfy EPA Region 7's policy on periodic review of state and local programs, and 3) to review permitting activities being conducted at natural gas pipeline compressor stations with the goal of gaining a better understanding of the pipeline industry and providing information for the energy extraction enforcement initiative. However, the focused evaluation was *not* conducted in order to assess the compliance status of sources within the natural gas pipeline interstate transmission industry. The overall scope of the review focused on the following as they apply to the natural gas pipeline interstate transmission industry: 1) major source (PSD) permitting, 2) synthetic minor permitting, 3) application of federal technology standards under the new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and maximum achievable control technology (MACT), 4) establishment of enforceable permit conditions, and 5) the interaction between the Title V and new source review (NSR) programs.

The EPA review team was comprised of Robert Cheever, Jon Knodel, Patricia Scott, Eric Sturm and Robert Webber. During the exit interview with the air permitting program managers of NDEQ, the team discussed the direction of the program review. The exit interview provided an

opportunity for the EPA and NDEQ staff to meet and discuss our general findings. Overall, we found that the department runs a comprehensive construction and operating permit program with respect to the natural gas pipeline interstate transmission industry, but would benefit from the recommendations described in this report. The review team appreciates the cooperation shown by the department during our visit.

EPA initiated its review process by telephone meetings on October 12, 2010, and followed up with a letter to the department dated November 9, 2010. Several e-mail messages were sent between October 18 and November 8, 2010, requesting specific detailed information about the NSR and Title V programs. The department provided a timely and comprehensive response for each request.

The team evaluated 31 source files, and the major findings, including both commendations and recommendations, are described in Section II. Section III includes a list of source files reviewed, and Section IV includes summary spreadsheets detailing permitting information and activities found in the file. Lastly, Section V contains an abbreviated questionnaire completed through interviews conducted during the site visit and follow-up contacts with the department. The source files were selected based upon Standard Industry Classification (SIC) codes 4922 and 1311, establishments engaged in the transmission and/or storage of natural gas for sale, and crude petroleum and natural gas, respectively. The list was further refined by the EPA permitting team to select the sources conducting interstate gas transmission compressor station activities in the state of Nebraska.

The review team evaluated all related permitting documents in the available files, including Title V, PSD, synthetic minor, minor source permits, no permit required determinations, and Class II operating permits. The archived files were not reviewed during our site visit; however, additional documents were requested for review. The construction documents were compared with the Title V permits to assure that preconstruction permit terms were being properly incorporated into Title V permits. Since we reviewed the various kinds of permitting actions contained in the files reviewed, i.e. Title V, PSD, synthetic minor, minor source permits and no permit required determinations, the files reviewed are likely to be representative of NDEQ's air permitting program with respect to the natural gas pipeline interstate transmission industry as a whole.

B. Summary of Findings and Conclusions

On balance, the department runs a satisfactory construction and operating permit program based on our review of the natural gas processing industry files, our day-to-day interactions with NDEQ, and our regular on-going reviews of their Title V and PSD permitting activities. In general, we found that for all the projects reviewed during our on-site visit, NDEQ completed the proper level of permitting with no major institutional gaps. As described in more detail below, however, we have a number of recommendations which would improve the enforceability of individual permits and completeness of the permitting record, with little or no impact on permitting resources.

Commendations

With respect to the permitting files reviewed:

- We observed that applicable requirements are being included in the Title V operating permits.
- We noted that most major source operating permits are being issued timely, and the sources are submitting timely applications for renewal permits. The files contained

copies of a reminder notice that the department sends to sources with application due dates. These notices most likely relate to the companies timely submitted applications.

- We found copies of Public Notices for the permits in the files. Newspaper clippings for local papers were observed.
- The fact sheets contain a clear description of the reason for the permitting decisions, and they give a good history of what permitting actions have taken place at the site. Likewise, a history of the permitting activity for the source may prove to be helpful to new staff as they prepare renewal permits or permit modifications.
- It appears, from the files reviewed, that the pipeline sources are appropriately meeting PSD or Title V obligations and not staging projects to avoid permitting.

Recommendations

- We reviewed approximately 16 Title V permits and approximately four (4) of them went a few months beyond the 18-month timeline for issuance. We recommend that more attention is given to issuing the operating permits within 18 months of receiving a complete application.
- We observed one file that would have benefited from using up-to-date emission factors for emissions testing. The NDEQ permitting section may want to “true-up” (make representative of actual test results) emission factors as part of the Title V renewal process to tighten up the monitoring requirements for the emissions units. This practice needs attention especially where §52.21(r)(4) limits have been set.
- The Title V language for “permanent” turbine or IC engine replacements, which allows a 40 ton per year increase in emissions each time the unit is replaced, is not consistent with the PSD relaxation language found in 40 CFR 52.21(r)(4). Typically, a source is allowed a one-time increase less than the “significant” threshold and then must keep its emissions below this threshold. If the unit is subsequently replaced a second or third time, or more, and accompanied by an additional emissions increase every time, it can be a relaxation of a limit established under § 52.21(r)(4), triggering the requirements of § 52.21(j) through (s). In addition, a construction permit should cap the emissions through a permanent and enforceable limit following the first replacement.

Observations

- Another area we looked at was disaggregation of sites. The pipeline industry is one that could lend itself to such practices. The pumping stations could be located adjacent or contiguous, and the source may try to avoid either PSD review or Title V permitting by claiming each site is a separate source. We recommend that you use all available tools such as Google maps and on-site inspections where inspectors can check for adjacent sites to see what or who the neighbors are nearby.
- As pipelines are a source of NO_x emissions, we recognize the state may have challenges and questions related to implementation of the new 1-hour NO_x standard. Therefore, we encourage NDEQ to raise any questions you may have during our regular monthly permits calls.

II. Small Business Compliance Assistance (CAA Section 507)

EPA point of contact: Gary Bertram

The purpose of this review was to evaluate the current status of the Nebraska small business stationary source technical and environmental compliance assistance program. Review of the state program is conducted every four years. The program review was conducted March 29, 2011, at the office of the NDEQ. Participants in the program review were Gary Bertram, Environmental Engineer with U.S. EPA Region 7, Air Permitting and Compliance Branch; and Joe Francis, Associate Director, Nebraska Department of Environmental Quality, Division of Environmental Assistance.

A. Program Funding and Organization

The Nebraska 507 program is run by one employee housed in the Division of Environmental Assistance. This person has the title of Small Business and Public Assistance Coordinator (SBPA). The position is funded with air fees collected from industry. While the 507 program is officially staffed by only the SBPA, the NDEQ Assistance Program consists of contributions from a number of NDEQ staff. NDEQ has approached compliance assistance from a multi-media standpoint since the inception of the program. In instances when compliance assistance is provided by the individual programs, those efforts are funded by the specific program i.e. the Water Quality Division pays for NPDES assistance, the Waste Management Division pays for RCRA assistance, etc.

The SBPA position had been vacant since May 2010; however, Mr. Ryan Green has accepted the position and is scheduled to occupy the SBPA position on April 25, 2011. The 507 program continued to function during the absence of a SBPA. Three persons contributed to the continuation of the SBPA responsibilities during the search for a permanent replacement. Joe Francis, Kevin Stoner and Julie Ward each contributed a fraction of their time to conduct and coordinate 507 program activities.

B. Activities and Accomplishments

NDEQ has formed an Assistance Team, which is coordinated by the SBPA. The Assistance Team includes representatives from the following media programs: air; waste; and, water. The Assistance Team was formed to:

- Provide multi-media regulatory compliance assistance to businesses and industry;
- Stay abreast of emerging environmental issues and regulatory requirements; and,
- Coordinate with other state agencies and the EPA to provide comprehensive assistance to the public and industry.

During the year 2010, the NDEQ assistance-based activities included 506 on-site assistance visits and 142 presentations at meetings, workshops and conferences. These activities were accomplished by a combination of the SBPA substitutes, Assistance Team members, and various NDEQ programmatic inspectors.

The NDEQ Air Quality Division (AQD) conducted four "Air Update" workshops across the state to educate the regulated community on new and upcoming regulatory requirements. The emphasis in 2010 was on area source rules affecting automotive body shops and stationary internal combustion engines. AQD also developed two web based tools to assist small businesses. The "Air Toxics Notebook" assists small businesses in finding information on relevant regulations. The second tool is a web site that tracks the development of federal regulations.

C. Compliance Advisory Panel

Section 507 of the Clean Air Act requires the state to establish a Compliance Advisory Panel (CAP) to oversee and report on the effectiveness of the state small business assistance program. Nebraska has an established CAP which meets annually. The CAP consists of two Governor Appointees, four Legislative Appointees and one NDEQ Director Appointee, and the SBPA acting as non-voting Secretary for the CAP. The most recent CAP meeting was held on February 24, 2011, in Columbus, NE. Four of the eight CAP members were in attendance.

The CAP submits a report to the Governor annually. The report summarizes small business compliance assistance activities conducted during the previous year. The report is drafted by NDEQ and submitted to the CAP for review and comment before submission to the Governor.

The CAP is intact and the annual meetings fruitful, however, NDEQ feels that the CAP members could be engaged more frequently to increase its effectiveness. NDEQ is considering an increase in the frequency of the CAP meetings to semi-annually. The newly hired SBPA will also be encouraged to interact with the CAP members throughout the year, as opportunities arise.

D. Summary and Recommendations

Nebraska appears to be implementing a successful small business assistance program, even though the SBPA position has been vacant for almost one year. The newly hired SBPA is scheduled to begin on April 25, 2011. Filling the vacancy will provide a full time employee to focus on small business compliance assistance and SBPA responsibilities.

The Nebraska CAP meets on an annual basis. The Panel has indicated a desire to meet twice a year. Currently tentative plans call for a fall meeting in 2011. EPA agrees with NDEQ's assertion that the CAP effectiveness could increase with additional interaction with the SBPA and the NDEQ greater assistance program.

III. Compliance & Enforcement (State Review Framework (SRF))

EPA point of contact: Angela Catalano

A. Executive Summary

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

The SRF review of the Nebraska air enforcement program identified the following major issues:

- Data entry of noncompliant status;
- 2011 CAA 105 Work Plan requires inclusion of Minimum Data Requirements (MDRs) to include Title V deviations data;
- High Priority Violations (HPV) discovery rate is low;
- HPVs are not entered into the AFS data system within 60 days of designation;
- Lack of administrative penalty authority delays bringing source back into compliance;
- Documentation of economic benefit needs to be included in source files; and
- Documentation of final penalty needs to be included in source files.

The SRF review identified the following areas which meet SRF program requirements:

- Minimum data requirements;
- Nebraska Inspection Coverage met the goal for Full Compliance Evaluation (FCE) at Major and Synthetic Minor sources (SM80);
- Nebraska Quality of Inspections produces reports that are accurate and detailed;
- The State meets Timely and Appropriate Action with 80% of HPVs meeting timeliness goal, and
- Nebraska’s Final Penalty Assessment included a penalty for all HPVs.

B. Background information on State program

Agency Structure

The Nebraska Department of Environmental Quality was created pursuant to passage of the Nebraska Environmental Protection Act in 1971. Although the Department has grown and been given additional responsibilities over the years, its ongoing mission has remained the same - the protection of Nebraska’s air, land, and water resources. Presently, the Agency is authorized a staffing level of 217 full-time employees, of which 35 FTEs are dedicated to the Air Quality Division.

Compliance and Enforcement Program Structure

The objectives of the Air Quality Division are to achieve and maintain the ambient air quality standards, to protect the quality of the air in areas of the state that have air cleaner than the standards, and to implement air quality rules and regulations. By fulfilling these objectives, the Department states that it is confident that public health and the environment will be adequately protected.

The major programs in the Air Quality Division are: the Permitting Section, which consists of the construction permit program, and the operating permit program; the Compliance Section which conducts ambient air quality monitoring, stack testing observations, and inspections. The Program Planning and Development Unit (PPD) is also part of the Air Quality Division. The PPD is responsible for regulatory development, emission inventory, modeling, State Implementation Plan submittals, compliance assistance, and outreach.

The establishment of six local field offices has enabled the agency to provide the public with greater access to NDEQ staff. They are also able to provide timely response to citizens and to develop a better understanding of local issues because NDEQ staff live and work in the local community. The Field Office Section consists of 15 employees who conduct compliance inspections, complaint investigations, environmental sampling, project management, and local compliance assistance for the agency's Air Quality, Waste Management and Water Quality Divisions.

The State and EPA signed a Performance Partnership Agreement in 2010. Basic or "core" Air Quality Division Program components consist of:

- Compliance and Enforcement of the Air Quality Regulations
- Permitting in accordance with the State Implementation Plan (SIP), federal, and state regulations
- New Source Performance Standards
- Regulatory Development and Program Planning
- Hazardous Air Pollutants
- Ambient Air Monitoring and Stack Testing
- Emission Inventory
- Outreach, Training and oversight of Local Agencies
- Support and active participation in national, regional, state, and local organizations
- Data Communication and Support

The overarching goal of the Clean Air Act and amendments is to authorize States to assume primary responsibility for implementing the air quality regulations. In order for a State to assume the regulatory lead as the implementing agency, it must be authorized by EPA to do so. The State of Nebraska, by Memorandum of Agreement with the U. S. Environmental Protection Agency (EPA), dated July 3, 2003 has established policies, responsibilities and procedures for the Air Quality program. The Memorandum of Agreement (MOA), the current Performance Partnership Agreement (PPA), Performance Partnership Grant (PPG) and any additional agreement(s) should be consistent with the statutory and regulatory requirements.

As stated on the NDEQ home page, enforcement actions are pursued by the agency when compliance issues are serious, chronic, or cannot be otherwise resolved. NDEQ's maximum penalty is \$10,000 per day per violation. The NDEQ works with the Attorney General's Office to

resolve enforcement actions. All penalty monies collected are distributed to the local school district where the violation occurred.

As part of any settlement, the source may voluntarily agree to undertake an environmentally beneficial project related to the violation in exchange for mitigation of the penalty. This is referred to as a Supplement Environmental Project or a SEP. SEPs must be activities that go above and beyond with is necessary to comply with the law.

The Air Compliance Section may discover violations in a variety of ways, including, but not limited to compliance inspections, report reviews, complaint investigations, and referral from other agencies, follow-up inspections, and reviews permit applications. Once violations have been detected they are documented in an inspection report or memorandum as soon as possible. When violations do occur, Nebraska may seek a voluntary return to compliance through informal means or seek formal enforcement. Depending on the type of violations, one or more of the following actions and enforcement mechanisms may be pursued:

- Voluntary Compliance
- Letters of Warning
- Notice of Violation
- Permit Denial, Revocation, or Modification
- Administrative Order
- Consent Orders, Agreement, Stipulations
- Injunctive Relief
- Referral to State Attorney General (AG)
- Referral to EPA
- Joint State/EPA Enforcement
- SEPs

To initiate an enforcement action, the Air Quality Compliance Section recommends enforcement to the Division Administrator, who then makes a recommendation to the Deputy Director. If the Division Administrator and Deputy Director agree, the enforcement case is then referred to the Legal Division. An Enforcement Request Form is completed by the Air Compliance Section staff. These forms may be completed by the inspector and must be approved by the Section Supervisor and Division Administrator. Multi-media enforcement requests may require multiple approvals from the appropriate supervisors and Division Administrators in all media. The Air Quality Division and the Waste Division occasionally have joint enforcement actions. The types of enforcement action that may be requested are described in Chapter 3 of the Nebraska Enforcement Manual.

Once the Enforcement Request is sent to the Legal Division, the matter will be assigned a case number and a staff attorney for review and handling. Depending on the type of enforcement action requested, the attorney may contact the individual initiating the enforcement request for more information regarding the case, discuss alternatives, and other possible remedies. The Penalty Computation Worksheet, along with any economic benefit is calculated by the Legal Division Staff. If penalties or further judicial action is determined to be warranted by the Director, the case is referred to the Attorney General's (AG's) Office.

All penalties must be assessed in the context of a civil or criminal judicial action taken by the AG. The AG has authority to issue a judicial compliance order and/or assess penalties. If penalties are deemed appropriate, the amount of any negotiated penalty is left to the discretion of the

AG. NDEQ senior management is informed of the status of actions referred to the AG's office, but staff in the Legal Division and the Air Division gets little feedback regarding the basis for a final penalty assessment by the AG's office. The attorney should work closely with all levels of NDEQ air staff and the AG's office, if appropriate, to develop the case and bring it to conclusion. During a pending enforcement action, discussions with the violator are coordinated through the NDEQ attorney and/or AG's Office.

For civil proceedings, with the prior approval of the AG, the NDEQ may contact a violator in advance of referring the matter to the Attorney General, in an attempt to reach an amicable settlement. The Legal Counsel will usually make this decision on a case-by-case basis after consultation with the Assistant Attorney. The staff attorney and Director give consideration to timeliness issues and the likelihood of settlement.

Roles and Responsibilities

The Compliance Section consists of 12 employees who conduct compliance inspections, complaint investigations, environmental sampling, project management, and local compliance assistance for the agency's Air Quality Divisions.

Local Agencies

Two local agencies, the Lincoln/Lancaster County Health Department (LLCHD), and the Omaha Air Quality Control, have accepted, through contract with the NDEQ, and direct delegation from EPA, responsibility for various facets of the program. These responsibilities include air quality monitoring, planning, permitting and enforcement within their areas of jurisdiction. The City of Omaha and the LLCHD air compliance and enforcement program are reviewed by NDEQ annually. This review will include discussions of the Local Agencies with respect to their relationship with and responsibilities to NDEQ. However, this review does not include an in depth evaluation or site visit to the local agencies.

Resources

The Compliance Section of the Air Quality Division is responsible for conducting compliance inspections of air pollution sources, responding to citizen complaints, observing and evaluating stack tests, conducting ambient air monitoring, and overseeing the acid rain program. The Compliance Section consists of 12 Full Time Equivalent (FTE) employees working in the air program. The Compliance Section employees have a total of 28 years of inspector experience, 28 years of attorney experience, 32 years of supervisor/manager experience, 1 year of clerical experience, 35 years of data management and 13 years of stack tester experience.

Staffing/Training

The following information was provided by the NDEQ in their Annual Report to the Legislature dated December 1, 2010:

"Because the department deals with a wide array of complex environmental issues, it is essential to our operations that technically competent people are hired for vacant positions. Without highly trained and experienced staff, the department would not be able to effectively carry out its mission of protecting Nebraska's environment. Staff retention continues to be an important goal for the agency. Staff turnover impacts continuity in the department's programs and enforcement activities, and causes additional costs for training of replace staff members. The department strives to foster and maintain an employee-friendly workplace by offering transfer and promotional opportunities for qualified internal applicants. In addition, training and tuition assistance are provided to interested staff. The January 2011, NDEQ organizational chart,

shows the Compliance Section is fully staffed, except for the clerical support position. That position has now been filled. The Air Quality Division has been challenged in the past to retain trained technical staff. With the economic downturn, however, all positions are filled with no expected changes in the near future.”

Nebraska encourages the office and field staff to take advantage of all available training which provides the knowledge and understanding to improve the performance of their duties. Staff participate in regulatory training provided by EPA (including the annual EPA Region 7 meeting with the states and locals), CenSARA training, NETI training, APTI Online Webinars, and the EPA field inspector workshop when available.

The Compliance Section continued to support the efforts of the Program Planning and Development Unit in fulfilling assistance and outreach activities. The PPD produced a comprehensive training DVD for use by both staff and regulated industry was developed. The PPD also produced a web-based information center on regulated hazardous air pollutants called the Air Toxics Notebook and another for New Source Performance Standards. The Compliance Section supported the PPD efforts of developing fact sheets and guidance documents to help Nebraska businesses understand and comply with air quality regulations and also participated in the annual Air Program Update Workshops in the summer 2010 for representatives from businesses, consulting firms, and industry. In addition to training, the Compliance and Enforcement Section communicates with the field staff on a regular basis.

Additional training reported by Nebraska included:

- PSD/Enforcement Training
- Nonattainment Series
- NACAA/EPA Retreat
- National Air Quality Conference
- EPA Basic Inspector Course
- EPA State/Local Modelers Workshop
- Ozone 101
- Air Toxics 101
- EPA Compliance and Enforcement Webinar

Data reporting systems/architecture

Nebraska enters the minimum data elements in their Integrated Information System (IIS) database. The Universal Interface (UI) uploads the IIS data into AFS on the 15th of each month.

C. Major State priorities and accomplishments

The Air Quality Compliance and Enforcement Section’s priority is to ensure that facilities are in compliance with the CAA. The Section has, in particular, focused attention on compliance of the ethanol industry, and implemented use of a FLIR Camera to better enable assessment of this industry.

Accomplishments

For FY10 NDEQ accomplished the following:

- 140 Inspections;
- 47 NOVs;
- 41 Stack Tests observed;
- 15 RATA tests conducted/31 RATA Test Reports Reviewed;
- Penalties collected in the amount of \$233,363;

- 20 Compliance Assistance visits;
- Participated in cement global discussions;
- Participated with EPA in power plant case development; and
- Developed an SOP improving inspection process and reports. The SOP directed improvement to permit writing by providing clearer applicable requirements and subsequent compliance.

Best Practices

Fact Sheets: The Air Quality Division continues to develop fact sheets and guidance documents which assist Nebraska businesses to better understand and comply with air quality regulations.

Inspection Reports: Due to improvement to their inspection process and reports, and improved permit writing with clearer applicable requirements, the Compliance and Enforcement Section's inspections and reports were consistent in content. Each of the inspectors uses a checklist of permit requirements. A consistent format provides more detailed observations and findings which better documents compliance.

Inspection Frequency: The CMS states that major sources should be inspected once every two years and SM80 are to be inspected once every 5 years. The NDEQ conducts inspections every other year at major sources and SM80 sources on a 4 year schedule.

HPV with Penalty: Nebraska collected \$233,363 in penalties on CAA violations. The SRF data shows that Nebraska is collecting a penalty on 100% of HPVs.

Element 13

Nebraska did not submit information under Element 13.

D. Process for SRF review

The EPA Region 7 enforcement on-site review team included Angela Catalano, Gary Bertram and Joe Terriquez, all representing the Air Compliance and Enforcement Section (ACES) of the Air Permitting and Compliance Branch (APCO) of the Air Waste and Management Division (AWMD). Todd Ellis and Ken Almquist are the primary representatives for the NDEQ air compliance program.

The CAA data "production" data of 2010 is the basis for review.

Communication with the State

On November 9, 2010, a letter to NDEQ confirmed that a review of the air program would occur in 2011. The CAA SRF kickoff meeting was held by conference call on January 6, 2011 to discuss program review procedures. On February 28, 2011, a list of source files to be reviewed was prepared and provided to Nebraska via email, along with the official data set. The number of files to be reviewed was determined based on the protocol in the SRF Implementation Guide, and was based on the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in the program. Each program file was selected randomly within a representation of types or program areas within each program. The report contains findings of the review for each program and areas of concern with a full explanation of these concerns along with the recommendations for resolution. The file list included 12 inspection files and 12 enforcement files. Providing the file list in advance provided ample opportunity for Nebraska to pull all necessary information into a central location. A Preliminary Data Analysis (PDA) was performed on the 2010 production data and provided to NDEQ on March 10, 2011. The PDA was uploaded to the SRF tracker at this time as well.

The on-site visit at NDEQ was conducted on March 29-31, 2011. On March 29, 2011, the EPA and NDEQ staff met, prior to initiating the file review. Discussions with staff, inspectors and management were held. A closeout meeting was conducted on March 31 with NDEQ representatives from the Program and Management, EPA review team staff, and EPA managers via telephone. Each metric was described and findings were discussed. The recommendation process was discussed to correct issues. NDEQ management requested that Headquarters provide comment on the draft report, prior to their review. The NDEQ would then review the final draft, which would include the comments made by Headquarters.

List of State and Regional Lead Contacts for Review

EPA: Angela Catalano, Environmental Scientist, Air Permits and Compliance Branch
 Gary Betram, Environmental Engineer
 Joe Terriquez, Environmental Engineer

NDEQ: Todd Ellis, Section Supervisor, Compliance Section
 Ken Almquist, Unit Supervisor, Inspection & Compliance Unit

E. Status of outstanding recommendations from previous reviews

During Round 1 (2007) of the SRF review of Nebraska's compliance and enforcement programs, Region 7 and Nebraska identified a number of actions to be taken to address issues found during the review. The table below (and Appendix) shows the status of progress toward completing those actions. While Nebraska completed recommendations from Round 1, the state has additional data coding issues.

| State | Status | Due Date | Media | E# | Element | Finding |
|--------------|-----------|------------|-------|----------|------------------------------|--------------------------------------------------------------|
| NE - Round 1 | Completed | 12/30/2007 | CAA | E11, E12 | Data Accurate, Data Complete | AFS data accurately and timely |
| NE - Round 1 | Completed | 12/30/2007 | CAA | E8 | Penalties Collected | Enter Penalties on the correct action type |
| NE - Round 1 | Completed | 12/30/2007 | CAA | E1 | Insp Universe | No documentation that inspection report sent to the facility |
| NE - Round 1 | Completed | 7/9/2007 | CAA | E11 | Data Accurate | Facilities incorrectly coded as SM-80 |
| NE - Round 1 | Completed | 7/1/2007 | CAA | E11, E12 | Data Accurate, Data Complete | Universal Interface does not provide minimum data elements |

F. 2011 Findings and Recommendations

| CAA Element 1: Minimum Data Requirements | |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Degree to which the Minimum Data Requirements are Complete | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Although MDR data are complete overall, Nebraska, including the local agencies, needs to review and properly classify NSPS data. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>The NDEQ has placed an emphasis on data management and data accuracy and spend time ensuring the minimum data elements have been properly entered into the data system. NDEQ's effort has resulted in achieving the National Goal of 100% for four of the six metrics identified below. The metric 1c4 – 81% requires that not only NDEQ, but LLCHE and the City of Omaha review the NSPS data and clean up sources that are incorrectly classified or do not contain a subpart code(s). The metric 1c6 – 91% is above the National Average and just below the National Goal.</p> <p>NDEQ, LLCHE and the City of Omaha need to review their facilities and reclassify facilities or provide the proper subpart codes as needed.</p> |
| Metric(s) and Quantitative Value | <p>1c4 – CAA subprogram designation: % NSPS Facilities with FCE conducted after 10/1/05 NE – 81.4%; National Goal – 100%; National Average – 87.6%</p> <p>1c5 – CAA subprogram designation: %NESHAP Facilities with FCE conducted after 10/1/05 NE – 100%; National Goal – 100%; National Average – 45%</p> <p>1c6 – CAA subprogram designation: %MACT Facilities with FCE conducted after 10/1/05 NE – 91%; National Goal – 100%; National Average – 84.7%</p> <p>1h1 – HPV Day Zero Pathway Discovery date: Percent DZs with discovery NE – 100%; National Goal – 100%; National Average – 58%</p> <p>1h2 – HPV Day Zero Pathway Violating Pollutants: Percent DZs NE – 100%; National Goal – 100%; National Average – 91%</p> <p>1h3 – HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s) NE – 100%; National Goal – 100%; National Average – 91.35%</p> |
| State Response | |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | No recommendations necessary. |

| CAA Element 2: Data Accuracy | |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Degree to which data reported into the national system is accurately entered and maintained | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention X Area for State Improvement – Recommendations Required |
| Finding | Nebraska is not coding sources out of compliance when an NOV is issued or stack test is failed. This results in incorrect and missing data. Data accuracy is a continuing issue from Round 1. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>Nebraska has placed an emphasis on data management and data accuracy. The file review identified a number of situations where data was entered incorrectly into AFS or may have been missing. The following describes discrepancies noted during the file review: Source – 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source – 059-00030: FCE conducted on 10/20/10 not found in file. Of the 22 source files reviewed, specific AFS data were entered into AFS for 20 out of 22. Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS requirements.</p> <p>Nebraska is not coding sources “out of compliance” when an NOV is issued. The discrepancies appear to be incidents of input error or inadvertent omission. As such, EPA is bringing its concerns to Nebraska’s attention so that they can address them.</p> |
| Metric(s) and Quantitative Value | 2a - # of HPVs/# of noncompliant sources NE – 116.7%; National Goal - ≤ 50%; National Average – 45.5% 2b1 - % stack tests without pass/fail result NE – 0%; National Goal – 0%; National Average – 1.3% |
| State Response | <p>On a NACAA enforcement call on November 2, 1011, an EPA AFS contact discussed AFS modernization. In her discussion, she stated EPA is going to eliminate the “compliance status” from future MDR requirements. As such, it is proposed that the following response be tabled. If EPA changes its mind on this requirement, the following proposal could be enacted. The NDEQ proposes that when a determination is made that a violation is an HPV, upon EPA concurrence, EPA will change the facility status to “out of compliance”. When the violation is closed, an HB (returned to compliance) code will be entered by the NDEQ. Upon receipt of the HB code, with EPA concurrence, EPA will change the facility status back to compliance. This approach seems logical since it is EPA who elevates a facility violation to the HPV status. Resolutions of violations are typically discussed during the bi-monthly calls and it seems reasonable that once agreement is reached, EPA would “resolve” the violation by changing the facility status back to compliance. This approach ensures discussion and agreement between both agencies before changes to a facility status are made.</p> <p>In addition, the two PCEs identified are not required data elements. They are voluntary and as such, should not appear in a report as needing attention. The FCE mentioned above was an EPA lead inspection. There was no inspection report because we had yet to receive the report from EPA even though the inspection was conducted six months prior to their on-site evaluation.</p> |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | Nebraska should correct the input errors and inadvertent omissions noted by June 1, 2012. For all federally reportable violations, HPVs and Non-HPVs the compliance status code should be maintained. When a source is elevated to HPV status, or is in violation, the facility status needs to be changed to “out of compliance,” and the facility status code also needs to be changed when the facility returns to compliance. EPA can assist Nebraska in this effort with training or by providing data entry assistance. Future input of “out of compliance” status should be entered on facilities listed as HPVs. Nebraska may need to revisit the mapping of the IIS system with the UCI and work with EPA to determine that the compliance status is being captured correctly in AFS. |

| CAA Element 3: Timeliness of Data Entry | |
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| Degree to which the Minimum Data Requirements are timely | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Nebraska has not entered any HPVs into AFS within 60 days. Entry of approximately one-third of both compliance monitoring and enforcement MDRs is untimely. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | No HPVs have been entered into AFS in a timely manner. Approximately one-third of both compliance monitoring and enforcement MDRs are entered into AFS in an untimely manner. EPA will continue to work with Nebraska ensure the timeliness of entering HPV data actions into AFS. There is a lag of at least 30, if not 60 days before HPV actions are uploaded from the IIS to AFS. To assist in decreasing this lag, the frequency of compliance calls between EPA and the state should be increased. |
| Metric(s) and Quantitative Value | 3a - % HPVs entered in less than/equal 60 days NE – 0%; National Goal – 100%; National Average – 34.7% 3b1 - % compliance monitoring MDRs entered more than 60 days NE – 64.6%; National Goal – 100%; National Average – 59% 3b2 - % enforcement MDRs entered more than/equal 60 days NE– 69.8%; National Goal – 100%; National Average – 70.3% |
| State Response | The NDEQ proposes that instead of increasing the frequency of calls, which will not address the lag time between the issuance of an NOV and a call, we will contact EPA through e-mail declaring our interpretation of HPV status of a violation. If in EPA’s review of the NOV and HPV declaration, a disagreement exists, a call can be initiated as soon as possible to resolve the issue. If EPA is in agreement with NDEQ interpretation, EPA will elevate the violation to HPV status. The bi-monthly calls can still address the ongoing status of the agreed upon HPV sources. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | Beginning January 1, 2012, EPA and Nebraska will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly calls. This will shorten the time lag for discussion of HPVs and entry of data related to HPVs. |

| CAA Element 4: Completion of Commitments | |
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| Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Nebraska needs to meet the requirements of all enforcement and compliance agreements with EPA. (See 2011-2012 CAA 105 Work Plan: Item 6.3) |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative. | Work plan item 6.3 requires Nebraska to update the IIS data system for Title V certification data entry, including the reviewed date, due/received date, result code, and deviation data. Deviations are not currently being entered in the data system. |
| Metric(s) and Quantitative Value | |
| State Response | We are committed to making these changes but other IT priorities have delayed progress. We will try and initiate these changes as soon as possible. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | By June 1, 2012, Nebraska will update data screen to reflect MDRs for Title V compliance deviations. |

| CAA Element 5: Inspection Coverage | |
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| Degree to which local program completed the universe of planned inspections/compliance evaluations | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> X Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Nebraska meets the requirements for inspection coverage. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative. | <p>Nebraska met the national goal for self-certification review. Nebraska was well above the national average for FCE at Major, Sm80 facilities, and PCE coverage.</p> <p>Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS minimum requirement.</p> <p>Nebraska's inspection of other minor sources was below the national average, but there is no national goal.</p> <p>A typical Nebraska FCE observes emission points, evaluates rule and/or permit requirements, interviews employees and reviews records. FCEs conducted by Nebraska met the EPA definition of FCE.</p> <p>There are 13 sources with "unknown" compliance status; although it is a small number, a regular review of this field is a wise practice given that it helps to ensure a valid compliance status.</p> |
| Metric(s) and Quantitative Value | 5a1 – FCE coverage – Majors NE – 97.5%; National Goal – 100%; National Average – 88.7% 5a2 – FCE coverage – All Majors NE – 97.5%; National Goal – 100%; National Average – 88.9% 5b1 – FCE coverage – SM80 NE 92.7%; National Goal – 20 – 100%; National Average – 85% 5b2 – FCE coverage – CMS SM80 NE – 96/6%; National Goal – 100%; National Average – 89.1% 5c – FCE/PCE coverage – All SMs NE – 91.2%; National Average – 81.4% 5d – FCE/PCE coverage – other minors NE –6.9%; National Average – 26% 5E- Sources with unknown compliance status NE – 13; No National Average or goal. 5g – Review of Self Certifications completed NE – 100%; National Goal – 100%; National Average – 94% |
| State Response | |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | No recommendations are necessary. |

| CAA Element 6: Quality of Inspection or Compliance Evaluation Reports | |
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| Degrees to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations. | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | The Nebraska inspection reports are accurate and properly document observations. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>Nebraska has made improvements to the inspection process since SRF Round 1. A format has been developed in which the rule and permit requirements are incorporated into the report and the inspector documents findings in detail. In general, the inspection reports appear to be accurate, detailed and complete. The following were observed during the file review:</p> <p>Source - 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source - 047-00050: Inspection entered as FCE, but facility not constructed. Source - 145-000113: PCE (10/27/10) not entered into AFS Source - 141-00025: File index is not correct date range or documents in the file. Source – Abengoa, York and Ravenna files had comingling of documents.</p> <p>In general, files were well organized and documents were easy to find.</p> |
| Metric(s) and Quantitative Value | |
| State Response | |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | No recommendations are necessary. |

| CAA Element 7: Identification of Alleged Violations | |
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| Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Nebraska compliance determinations appear to be accurate and prompt; however, Nebraska falls far below the national guideline as it relates to discovery of facilities in noncompliance with FCE, stack, or enforcement. Nebraska does not report noncompliance status for failed stack tests. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>Nebraska utilizes a number of tools to determine compliance with the CAA requirements. In addition to FCEs and PCEs, Nebraska reviews submitted reports and certifications, and received/reviewed voluntary disclosure of violations from some facilities. Utilizing these approaches, Nebraska has been able to identify violations that may not be evident during an on-site inspection.</p> <p>Nebraska falls below the national average for facilities in noncompliance with FCE, stack test or enforcement. Nebraska management should try to understand and address this situation, if necessary. The Nebraska annual inspection rate, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p> |
| Metric(s) and Quantitative Value | 7c1 - % facilities in noncompliance with FCE, stack test, or enforcement NE – 6.3%; National Goal - >1/2 National Average; National Average – 22.3% 7c2 - % facilities with failed stack test and have noncompliance status NE– 0%; National Goal - >1/2 National Average; National Average – 46.4% |
| State Response | See response in element # 2 |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | By June 1, 2012, Nebraska needs to enter out of compliance codes when facilities are out of compliance due to violations or stack tests failure. Nebraska will review the results code of the nine failed stack tests and confirm that the pollutant compliance status reflected the same compliance outcome. Nebraska should incorporate a process to confirm that both data elements (results code and compliance status) reflect the same outcome. |

| CAA Element 8: Identification of SNC and HPV | |
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| Degree to which the state program accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Nebraska's HPV discovery rate of 2.6% is just below the national goal and below the national average. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative. | <p>The Nebraska annual inspection rate for major sources, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p> <p>Nebraska also reviews facility submitted semi-annual and annual reports in an effort to identify violations and HPVs.</p> <p>Nebraska has also been able to reduce HPVs with up front compliance assistance activities. For example, Title V facilities are notified prior to their renewal application deadline. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered.</p> <p>HPV training/refresher with enforcement staff is encouraged.</p> <p>Nebraska and EPA will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly.</p> <p>Although Nebraska appears to be deficient in Element 7c2, Element 8e shows that Nebraska is elevating failed stack test to HPV status above the National Average.</p> |
| Metric(s) and Quantitative Value | <p>8a – HPV discovery rate – Major sources NE – 2.6%; National Goal - >1/2 National Average; National Average – 6.4%</p> <p>8b – HPV discovery rate – SM sources NE – .6%; National Goal - >1/2 National Average; National Average – 0.4%</p> <p>8c - % formal actions with prior HPV – Majors NE – 80%; National Goal - >1/2 National Average; National Average – 67%</p> <p>8d - % informal enforcement actions without prior HPV – Majors NE –50%; National Goal - <1/2 National Average; National Average – 49%</p> <p>8e - % sources with failed stack test actions that received HPV listing – Majors and Synthetic Minors NE – 50%; National Goal - >1/2 National Average; National Average – 40.57%</p> |
| State Response | The EPA file review did not identify a single instance where DEQ failed to accurately identify a violation as an HPV. Training on HPV identification is unwarranted when EPA has not shown that a problem exists. EPA inspections in NE have not shown inconsistent non-compliance rates compared to those identified by NDEQ. Unless EPA can document an issue with HPV identification, NDEQ is not compelled to take action on unfounded assumptions. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that | During FY 2012, EPA will conduct a training/refresher course on HPV identification at the EPA - State/Local Permit and Enforcement meeting. |

| CAA Element 9: Enforcement Actions Promote Return to Compliance | |
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| Degree to which local enforcement actions include required corrective action that will return facilities to compliance in a specific time frame | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | The Nebraska formal enforcement process includes actions to bring facilities into compliance, however, Nebraska does not currently have statutory authority to assess civil penalties administratively, therefore civil penalty cases must be pursued in state court by the Nebraska Attorney General's Office. This leads to some issues with timeliness of actions and adequacy of documentation of actions in NDEQ's files. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>Nebraska formal enforcement actions focus on bringing the facility back into compliance. 3 files were reviewed with penalty actions. One of the three enforcement actions reviewed is pending at AG's office.</p> <p>Source - 019-00095: Consent Decree not found in file. No documentation of payment found. The penalty calculation did not take into consideration economic benefit. Source - 089-00044: Economic benefit not calculated even though letter from Linder to AG (10/21/09) states that controls were required. Source - 185-00030: No documentation of payment.</p> <p>NDEQ should review and resolve the reason for the 3-4 year delays in the AG's office, including: Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09)</p> |
| Metric(s) and Quantitative Value | File Review 9a – number of files with enforcement actions reviewed 3 9b - % enforcement actions returning source to compliance 60% |
| State Response | We agree with this recommendation. EPA correctly notes that NDEQ does not have the authority to assess administrative penalties against violators. The NDEQ must refer cases to the AG to seek judicial civil or criminal penalties. NDEQ has developed and uses a penalty calculation worksheet to calculate the gravity and economic benefit for actions referred to the AG. The AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. We will work to ensure that we consistently use and document the proposed penalty and enhance the description of economic benefit in future enforcement referrals. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | <p>NDEQ air program along with legal counsel should develop a plan to coordinate and communicate with the Attorney General's office. Nebraska needs to communicate with the AG to identify information about a case that would be helpful for the AG when calculating a penalty.</p> <p>The plan should include discussions and address adequate documentation of the proposed penalty versus final penalty, how it was calculated and payment of penalty. Also, the plan should address how to eliminate delays in the AG's office. A draft plan should be submitted to EPA Region 7 by June 1, 2012.</p> |

| CAA Element 10: Timely and Appropriate Action | |
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| Degree to which a local program takes timely and appropriate enforcement actions in accordance with policy relating to specific media | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | 80% of Nebraska's HPV enforcement actions meet timeliness goals. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | <p>The AFS data pull shows that only 20% of the state HPVs did not meet timeliness goals for the previous two year period. This is above the national average of 35%.</p> <p>Nebraska makes effort to conduct timely and appropriate enforcement actions and settle cases quickly. However, each enforcement case is unique in its own way. Nebraska's approach is to refer cases to the State AG. EPA understands that enforcement cases may take more time to bring to resolution, and encourages ongoing dialogue between EPA and Nebraska where individual case considerations require additional time to resolve the case. Data shows that the majority of Nebraska's cases in 2010 were "addressed" in a timely manner, by sending these cases to the AG. The following cases were identified in the AG office:</p> <p>Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09)</p> <p>See recommendation from Element 9.</p> |
| Metric(s) and Quantitative Value | 10a - % HPVs not timely NE– 20%; National Average – 35.9% |
| State Response | We agree that timely and appropriate enforcement is a major goal. We will continue to work with the AG to meet our enforcement goals. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | No recommendations are necessary. |

| CAA Element 11: Penalty Calculation Method | |
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| Degree to which local program documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Penalty calculation documentation in the file did not include economic benefit calculations. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative. | <p>Nebraska's penalty policy does provide for consideration of economic benefit in addition to gravity calculation of the penalty to be assessed. Documentation was not found in files to indicate an economic benefit was determined when calculating penalties. The Nebraska Legal Staff calculates a "base" penalty. The file review discovered penalties for three cases (185-00030, 019-00095, and 177-00052), however, there was no evidence in the file that showed whether penalties were calculated considering economic benefit.</p> <p>Nebraska did not calculate the economic benefit gained through noncompliance. In some cases, such as smaller facilities in which the current economic downturn would make it difficult to pay a penalty, the state may have a legitimate reason to lower an assessed penalty. However, the file does not document justification for not including an economic benefit component. Nebraska should be documenting calculation, or rationale for not calculating economic benefit as part of each penalty calculation.</p> <p>Legal staff should communicate penalty calculations with air staff. Since Air Program staff enters final penalty assessment in their data system, Legal needs to provide that information. (Currently, staff retrieves the penalty information from the public web site). It is suggested that the Legal staff share final penalty assessments with air staff for input into the IIS at the same time it is posted on the Nebraska public site.</p> <p>Nebraska files need to include documentation in the file how economic benefit was or was not assessed.</p> |
| Metric(s) and Quantitative Value | 11a - % penalty calculations that consider & include gravity and economic benefit 0% |
| State Response | The Legal Division provides a copy of the filed consent decree or judgment in a case to a designated individual in the Air Division at the same time it is placed on the public webpage. In the future, the Legal Division will send a notice to the entire Air Division notifying them of the filing. We understand that Air staff may possess or could obtain information that would assist in calculation of a proposed penalty and economic benefit. We will work to enhance our penalty calculations and improve communication between the Legal and Air staff in this regard. We will work to develop appropriate enforcement training to assist staff. |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | By June 1, 2012, Nebraska needs to document the calculation of economic benefit and, if needed, staff should be trained on calculating economic benefit. Final penalty payment needs to be documented in the file. |

| CAA Element 12: Final Penalty Assessment and Collection | |
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| Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected | |
| Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required |
| Finding | Differences between initial and final penalty, as well as the final penalty collected are not documented in the files. |
| Explanation (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.) | Proposed and final penalties sent forward to the AG should be justified. Penalties were drastically reduced by Legal staff. Reasons for such reductions need justification and documentation in the file. Documentation of receipt of a final payment was not included in the file. |
| Metric(s) and Quantitative Value | 12a – Actions with penalties NE - 6 12b - % HPV actions with penalty NE– 100%; National Goal - ≥ 80%; National Average – 88% |
| State Response | <p>We believe the difference between the NDEQ proposed penalty to the AG and the final penalty are adequately documented in the file. As noted above, the AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. However, we acknowledge that what is missing is an explanation of the reasons for this difference. The AG is an independent constitutional office with final decision-making on cases. We agree that feedback regarding final penalty amounts would assist the agency in evaluating the result of our enforcement actions and in pursuing appropriate enforcement cases in the future. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements and we will work to improve those communications.</p> |
| Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.) | By June 1, 2012, Nebraska should document receipt of a final payment in the facility file. Nebraska needs to include copy of receipt of payment in the file. |

IV. Air Planning & Grants

EPA point of contact: Chrissy Wolfersberger

Air planning encompasses emissions inventories, air modeling, rulemakings, and continuing environmental program grants to reduce exposure to air toxics and ensure that the air quality in all areas of the State continue to meet the National Ambient Air Quality Standards (NAAQS). Rather than conducting a comprehensive review of the air planning program, EPA focused its 2011 review on following up on issues identified in the previous program review, and on resolving known issues identified by program staff.

A. Local Programs – Lincoln and Omaha

In conducting the 2011 review, EPA staff (Michael Jay, Amy Algoe-Eakin, Chrissy Wolfersberger, and Steven Brown) and NDEQ staff (Bev Kellison and Dave Brown) met with two local programs, City of Omaha and Lincoln-Lancaster County Health Department. Within their local service areas, both agencies implement Title V operating permit programs (delegated authority from EPA)¹; implement NSPS, NESHAP, and MACT standards (also delegated authority from EPA)²; implement Prevention of Significant Deterioration (PSD) permitting programs, also known as the pre-construction permitting program (delegated authority from NDEQ, attachment 14 for program delegation letter); manage an emissions inventory; and receive Clean Air Act Section 105 pass-through funding from the state. The Lincoln-Lancaster County Health Department and the Douglas County Health Department also operate ambient air quality monitors, review of which will be done separately during Federal Fiscal Year 2012.

1. Lincoln-Lancaster County Health Department

EPA and NDEQ staff met with Scott Holmes, Division Manager, Environmental Public Health; Rick Thorson, Air Quality Section Supervisor; and several staff members in the air quality section on April 26, 2011. LLCHD shared budget information for the air program and organizational chart for the Environmental Public Health Department (attachment 16). Staff discussed general air program issues, such as diesel grants, enforcement cases, Flint Hills burning, and ozone. Lincoln-Lancaster was applauded by EPA for its thorough job in conducting the emissions inventory.

An issue of potential concern is that NDEQ has not submitted updates of the local (City/County) rules to EPA since 1999 for federal approval. This creates a situation where there could be a discrepancy between local, state, and federal rules, such that different agencies could be enforcing different rules. **EPA recommends that Lincoln-Lancaster coordinate with the State to submit a SIP revision incorporating local rule changes as soon as possible.** EPA offers assistance to the state and local agencies in obtaining refresher training on the State Implementation Plan (SIP) process, if desired.

2. City of Omaha Public Works Department

EPA and NDEQ staff met with Chester Black, air quality supervisor; Tim Burns and Dan May, environmental quality control technicians; John Mayne, Permit Writer; and Nicole Engels, environmental inspector, on April 26, 2011. The City of Omaha air program staff shared the

¹ Copies of the delegation notices can be found at: <http://www.epa.gov/region7/air/title5/titlevhp.htm>

² Most recent update: Federal Register: February 28, 2011, Volume 76, Number 39, Pages 10761-10771

program's budget, showing projected revenue and expenses for 2011, and the environmental services department organization chart (attachment 15 for org chart).

After a review of the City of Omaha's emissions inventory process and the 2008/2009 inventory year submittals, an issue regarding Confidential Business Information (CBI) claims was brought to the attention of City staff for resolution. Certain data elements required by the Consolidated Emissions Reporting Rule (CERR)³ and/or the new Air Emissions Reporting Requirements (AERR) rule⁴ are not being reported to the National Emissions Inventory (NEI). Facility total inventory is being submitted without including the process level inventory data, such as SCC codes, throughputs, and stack parameters such as height, diameter, exit velocity, volumetric flow rate, temperature, and geographic location. These parameters are critical to appropriately characterizing air quality and for conducting photochemical and dispersion modeling, which is used to support rulemakings and attainment demonstrations.

Omaha has claimed that this type of inventory data is Confidential Business Information (CBI) for nearly all facilities in the Omaha local jurisdiction. The AERR clearly states that inventory data, such as SCC and stack parameters, is not considered CBI by EPA. EPA supports the right of businesses to claim information as confidential, and fully supports legitimate claims of CBI. However, EPA does not agree with Omaha's conclusion that all process-level emission information for all businesses within the City of Omaha are confidential.

EPA asks the City of Omaha to submit all emissions information required under EPA's reporting rule for the 2010 inventory year and going forward. If the City of Omaha believes that specific information relating to specific processes at a particular source may be confidential, based on a detailed demonstration by the source owner, then Omaha should consult with NDEQ and EPA in determining how the information should be treated. Should the Omaha area be at risk of a nonattainment designation, years prior to 2010 may need to be corrected in order to draw appropriate conclusions for regulatory purposes. The 2008 comprehensive inventory is particularly important, as EPA will most likely utilize the 2008 inventory for forthcoming NAAQS analysis, such as ozone, SO₂, and NO₂.

B. State program - Nebraska Department of Environmental Quality

EPA Region 7 staff met with the State air program staff on April 27, 2011 to conduct the state portion of the 2011 air planning program review. Attendees were Shelley Schneider, Bev Kellison, Brian Kozisek, and Tracy Thompson; Tom Lamberson, Lisa Alam, Jim Yeggy participated in portions of the meeting. Staff had a wide-ranging conversation on NAAQS implementation, rulemakings, and emission inventories. Action items from the discussion were:

- EPA will convene a meeting with the state and local agencies to determine steps forward in the Omaha Ozone planning process. A Clean Air Performance Agreement is due in spring 2011.
- EPA offered assistance to the state and local agencies in obtaining refresher training on the State Implementation Plan (SIP) process, if desired.
- NDEQ committed to submit an update of the SIP (attachment 18) during spring 2011
- NDEQ committed to work on incorporating the Lincoln-Lancaster County local rules into the SIP during summer 2011, for submission to EPA by fall 2011

³ Federal Register: June 10, 2002, Volume 67, Number 111, Pages 39602-39616

⁴ Federal Register: December 17, 2008, Volume 73, Number 243, Pages 76539-76558

- EPA will work with NDEQ on submission of the 2006 PM2.5 Infrastructure SIP. The new SIP consistency memo outlines some alternative ways of conducting public notices, and should provide some useful guidance on the matter (see appendix 17, attachment B).
- NDEQ raised concerns about some potential violations of the 24 hour PM10 standard at Weeping Water. After the data has been quality assured, EPA and NDEQ will meet to lay out an approach for dealing with this issue.
- EPA and NDEQ agreed that it would be useful to update the NSPS/NESHAP/MACT delegation agreements, since many were put into place more than 20 years ago. The purpose of the updates would be to consolidate all of the related delegations into one document, and clarify roles of various agencies in implementing the standards.
- NDEQ agreed to review the point source emissions inventory in the 2008 submittal to verify that valid stack parameters were submitted. NDEQ plans to correct the inventory where stack parameters should have been entered by reviewing the top emitters of SO2 and correcting those facilities first.
- EPA inquired about the underreporting of VOC emissions in the emissions inventory. This was a finding from the 2003 program review and was reiterated in the 2007 Program Review. NDEQ is reviewing this issue and has committed to resolve the reporting discrepancy.
- NDEQ plans to check on electric generating units (EGU) emissions and report those to the NEI.
- NDEQ and the local agencies in Nebraska plan to discuss the Flint Hills burning and the Kansas Smoke Management Plan during the June 2011 air directors' meeting, to emphasize the impacts of smoke on Nebraska communities.

V. Asbestos

EPA point of contact: Randall Whipple

A. Asbestos implementation in Nebraska

1. Background

The Environmental Protection Agency (EPA) periodically evaluates the states' implementation of programs delegated under the federal Clean Air Act (CAA). Funds are allocated to the State of Nebraska via a grant to the Nebraska Department of Environmental Quality (NDEQ) pursuant to §105 of the CAA. Funding allocations are then passed through to the Lincoln-Lancaster County Health Department (LLCHD) and to Omaha Air Quality Control (OAQC) for asbestos activities as set forth in work plan agreements with NDEQ. Through delegation agreements with EPA Region 7, LLCHD and OAQC have authority to administer the National Emission Standards for Hazardous Air Pollutants (NESHAP) – National Emission Standard for Asbestos, pursuant to Title 40 of the Code of Federal Regulations, Part 61, Subpart M. The programs are responsible for notifications, inspections, enforcement case development, outreach, and data management.

Nebraska also regulates asbestos projects under state statutory authority (Neb. Rev. Stat. §§71-6301 to 71-6317). Pursuant to this authority, the Nebraska Department of Health and Human Services (NDHHS) implements and enforces its own regulations at Title 178, Environmental Health, Chapter 22, Asbestos Projects. EPA does not provide any funding to NDHHS for its asbestos regulatory efforts.

On May 18, 2011, in Lincoln, NE, EPA Region 7 met with representatives of NDEQ, NDHHS, and OAQC to gain a comprehensive perspective on asbestos regulatory programs in Nebraska. As part of this program review, Region 7 also performed a detailed on-site review of LLCHD; our findings are presented in Section B of this report.

During 2003, the Nebraska Governor and Legislature severely curtailed funding to NDEQ for its asbestos program. The reasoning, in part, was that NDHHS was already regulating asbestos under the state's regulations, therefore, asbestos program funding to NDEQ was considered duplicative. As a result, NDEQ could no longer process project notifications and conduct neutral scheme inspections, but continues to address citizen inquiries and responds to tips and complaints. Therefore, the primary purpose of this program review was to assess what effects the NDEQ program disinvestments have had on overall asbestos program implementation in Nebraska.

2. Summary

Through the collaborative efforts of NDEQ, NDHHS, LLCHD, and OAQC, an effective asbestos regulatory presence is maintained to ensure health protection for the citizens of Nebraska. EPA recommends that NDEQ memorialize this collaborative relationship via a memorandum of understanding between appropriate agencies. Details describing the procedures for ensuring coordination and program implementation should be captured in a compilation of standard operating procedures.

3. Findings

Based on the program performance data (Appendix 19), EPA does not have any concerns regarding the overall level of asbestos activity and field presence in Nebraska. NDEQ has formal contractual agreements in place with LLCHD and OAQC; however, these agreements need to be updated. NDEQ conducts a biannual negotiation and workplan process with the local agencies which define work activities for two-year periods.

There is no formal agreement with NDHHS, nor any workplan agreement. Nevertheless, NDEQ and NDHHS communicate virtually daily on asbestos issues. NDEQ, NDHHS, LLCHD, and OAQC frequently perform joint inspections, but NDEQ's efforts are often focused on the solid and hazardous waste components. NDHHS documents violations of both the state rule and the asbestos NESHAP. Both NDEQ and NDHHS refer formal enforcement cases to the Nebraska Attorney General's (AG) Office. The AG reviews cases for compliance with both the state rule and the NESHAP, and pursues enforcement in accord with the appropriate statutory and regulatory authority.

NDEQ does continue to receive asbestos NESHAP demolition/renovation notifications; however, most often, they are simply stamped and filed. NDHHS also receives notifications which address both the state rule and the NESHAP; thus, a single notification can address the requirements of both agencies.

In some respects, the state rule is more stringent than the asbestos NESHAP. For example, the state's regulatory threshold is 3 square or 3 linear feet, and the state rule has more specific requirements for work practices and personal protective equipment. Notifications are required for non-friable asbestos projects (except for single-family homes). The state rule does contain waiver provisions; however, NDHHS does not grant any waivers which would infringe on NESHAP requirements. The state rule does not require demolition notifications when no asbestos-containing materials have been found. However, NDHHS does inspect some of these demolition projects, based on notification data received pursuant to the asbestos NESHAP.

NDEQ coordinates closely with the Nebraska State Fire Marshal. Prior to conducting intentional burnings as fire training exercises, local fire departments must submit proof that regulated asbestos-containing materials have been abated in accord with the NESHAP. NDEQ also provides asbestos notifications to the fire marshal's office. NDEQ, through its various programs, conducts a substantial amount of regulatory outreach to other governmental entities, e.g., city buildings and codes departments, county assessors' offices, local fire departments, and local 911 emergency response networks.

4. Commendations

EPA is pleased in regard to the collaborative inspection, enforcement, and information sharing efforts of NDEQ, NDHHS, LLCHD, and OAQC; an effective asbestos regulatory presence is maintained to ensure health protection for the citizens of Nebraska. The loss of NDEQ's asbestos program resources has not been an insurmountable hurdle. Another fortunate circumstance is that the Nebraska AG's office reviews cases for compliance with both the state rule and the asbestos NESHAP, and can thus pursue enforcement actions in accord with the appropriate statutory and regulatory authority.

5. *Recommendations*

The state's collaborative asbestos program efforts should be incorporated into a standard operating procedure so that, over time, staff new to these agencies can continue to operate with the same level of efficiency. Moreover, such a document could be revised over time to reflect continuous improvement, particularly in this era of diminishing governmental resources.

NDEQ's contractual (sub grant) agreements with the local agencies need to be updated. Perhaps these agreements would be an appropriate vehicle by which to memorialize some of the aforementioned collaborative processes between the respective agencies.

EPA understands that the Nebraska Legislature charged NDHHS with the responsibility to implement the state's asbestos program; however EPA does not have any direct oversight authority over this agency. We request NDEQ to consider establishing its collaborative relationships via a memorandum of understanding between the appropriate agencies. Without the continued collaboration of NDHHS and the local programs, NDEQ would be unable to demonstrate an adequate asbestos regulatory presence in Nebraska.

B. *Asbestos implementation – Lincoln/Lancaster County*

1. *Introduction*

On March 7, 2011, Mr. Randall Whipple, EPA Region 7 inspector, conducted an on-site visit, and met with the following LLCHD-Air Quality Section (AQS) representatives: Mr. Scott Holmes, Division Manager, Mr. Rick Thorson, Air Quality Section Supervisor, Mr. Harry LeDuc, Senior Environmental Health Specialist. The visit included interviews with LLCHD management and staff and a review of the program's performance toward implementing and enforcing the federal asbestos NESHAP regulations. The LLCHD-AQS implements its NESHAP asbestos program in accord with the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards (LLC-APCP-RS) Section 23.A.8 Hazardous Air Pollutants.

On March 8, 2011, Mr. Whipple met with Mr. LeDuc and accompanied him to a large-scale asbestos abatement site, whereupon an oversight inspection was conducted pursuant to this program review.

On March 9, 2011, EPA R7 met with LLCHD-AQS for a program review closeout session in which EPA presented a summary of its finding and provided an opportunity for questions.

2. *Summary*

LLCHD staff demonstrated a thorough knowledge of the federal NESHAP asbestos regulation, and is responsive to asbestos issues. The program's enforcement files were well organized; however, EPA is concerned about an apparent lack of formal and informal enforcement activity. LLCHD demonstrates professionalism during asbestos compliance inspections and adheres to appropriate safety practices. Implementation of the program is reinforced by LLCHD's dedicated and consistent efforts of direct coordination and communication with state, county, and municipal agencies in the exchange of information regarding asbestos demolition and renovation projects.

3. *File review*

LLCHD's asbestos case files were found to be well documented. They were organized by a registry log and an assigned project number cross referenced to a specific notification, contractor, or related inspection report and/or enforcement action. Hard copy files are maintained within Mr. LeDuc's office for a least one year to provide easy access. After the first year, the files are transferred to a records storage room within LLCHD for at least five years. Afterwards, large project hard copy files are retained, while files for smaller projects are destroyed.

Case files are generally initiated by receipt of city building and codes department renovation/demolition permit notifications, contractor or owner/operator notifications, tip/complaints, follow-up responses, or related governmental enforcement actions. The case files nearly always included an inspection report, but, in several instances, did not provide any summary or conclusion, which made it difficult to determine whether an enforcement action had been completed. The inspection reports varied from brief, one-half page hand written report to a more formal, three-page typed report with substantial details, observation, and applicable enforcement disposition. Inspection reports are initiated in response to project notifications and/or other regulated asbestos abatement activities.

Inspection candidates are selected on the basis of tips and complaints as well as from information received on project notification forms. The case files generally contained a contractor's inspection report, a sample analysis report, and a proposed work plan; LLCHD requests such reports when they are available. Inspection reports are generally compiled from the inspector's notes and observations; written statements from owner/operators are generally not requested. Photos and diagrams are included in the file when available. If samples have been taken by a LLCHD inspector, a chain of custody record is included in the file. LLCHD's inspection reports evidenced consistency with the federal asbestos NESHAP regulations, as well as the previously identified local program regulations, and the County Resolutions Policy Statement. LLCHD utilizes the policy statement and the inspection report checklist as standard operating procedures. LLCHD has coordinated and integrated its inspection procedures with other state and local agencies with concurrent responsibilities for asbestos program enforcement, e.g., NDEQ, and the Nebraska Department of Health and Human Services (NDHHS).

4. *Oversight inspection*

In conjunction with this program review, EPA accompanied LLCHD on an unannounced compliance inspection of a three-story, 33,000 square foot, commercial building asbestos abatement project. The LLCHD inspector demonstrated considerable proficiency and utilized a standardized asbestos project inspection checklist. He exercised an admirable degree of professionalism while communicating with the contractor's on-site representative. The inspector demonstrated a thorough knowledge of the asbestos regulations, donned the appropriate personal protective equipment, and adhered to applicable safe work practices. In accord with the inspection, LLCHD ensured that the project had been properly notified and that a thorough inspection for the presence of asbestos had been conducted prior to the commencement of demolition or renovation operations (40 CFR §61.145(a) & (b)).

5. *Program activity level*

On January 18, 2011, EPA R7 sent an e-mail request to the LLCHD-AQS requesting performance summary data for the period of October 1, 2009 through September 30, 2010. On February 16, 2011, LLCHD responded with data (e.g., notification, inspection, and enforcement action numbers) for the periods of October 1, 2009, through December 31, 2010. The data indicated that 50 asbestos notifications and 62 inspections occurred during FY-10; however, no formal or informal enforcement actions were reported.

Annually, LLCHD conducts at least one NESHAP asbestos waste disposal and landfill facility inspection. The inspections thoroughly review the facility's waste disposal records, generator information, methods of containerization, required warning signs, container labeling, appropriate covering procedures, and observations for no visible emissions.

During the March 7, 2011, on-site visit, EPA R7 requested examples of enforcement actions (either formal or informal) from previous fiscal years, given that LLCHD had not issued any enforcement actions during FY-10. LLCHD indicated enforcement action examples would be mailed to EPA R7, as none were immediately available at the time of on-site visit. On March 14, 2011, LLCHD provided copies of (4) compliance orders which had been issued during FY-07 through FY-09; however, there was no evidence that any monetary penalties were collected pursuant to these orders.

During our May 18, 2011, meeting in Lincoln, EPA learned that the local agencies (LLCHD & OAQC) frequently participate in formal enforcement actions which are taken by NDHHS. Thus, the local agencies would not receive any statistical credit in such instances. EPA commends this collaborative effort. Nevertheless, from a program integrity standpoint, EPA is concerned about LLCHD's lack of any formal or informal enforcement actions for FY-10.

6. *Commendations*

LLCHD is very responsive to the full range of asbestos issues within its jurisdiction. Despite resource limitations, the Air Quality Section has worked diligently to overcome those limitations through professional partnerships with other state and local agencies, such as NDEQ, NDHHS, City of Lincoln Building and Codes Department, Lancaster County Assessor's Office, local fire departments, and the local 911 emergency response network. Through these working relationships, LLCHD receives and exchanges critical information as it relates to non-notified asbestos activities or potential asbestos fiber releases. Additionally, LLCHD's asbestos program periodically provides asbestos awareness training to its partnership agencies, which, in a reciprocal fashion, refer potential asbestos issues to LLCHD in the course of their multi-media inspections. Therefore, LLCHD should be commended for its initiative toward establishing partnerships and utilizing pertinent information for enforcement targeting and oversight activities.

7. *Recommendations*

The LLCHD inspection protocol in effect at the time of our program review appeared to adequately address asbestos NESHAP criteria. However, EPA is concerned that the apparent lack of enforcement actions and monetary penalties could compromise the

effectiveness of LLCHD's asbestos program. The importance of an effective enforcement program cannot be understated. While EPA acknowledges and commends the program's collaborative efforts with other state agencies, LLCHD should consider making greater use of its available enforcement tools, including monetary penalties, to ensure deterrence against non-compliance.

C. State comments on draft report

NDEQ understands EPA's recommendation to develop an MOU with NDHHS regarding the oversight of the overall asbestos program in Nebraska. EPA should understand that the Legislature charged NDHHS with the implementation of the state asbestos program. Likewise, as recognized by EPA, there are overlaps between the asbestos NESHAP and the state asbestos program. However, NDHHS does not take responsibility for NESHAP implementation and enforcement. Should NDHHS discover a situation they believe may be an environmental violation of the NESHAP; they refer it to NDEQ for enforcement.

NDEQ believes that a good compliance record does not necessary require heavy penalties. If LLCHD has gained the cooperation of the asbestos industry through inspection, voluntary compliance, and compliance assistance measures, then penalties have not been required. Penalties should be used at the appropriate time after other measures have failed.

VI. Air monitoring

EPA point of contact: James Regehr

Final report will be issued as a supplement to this report.

2011 Nebraska Air Program Review Schedule

Overall Entrance Conference: January 6, 2010, 9:00am

Overall Exit Conference: will be scheduled if requested, fall 2011

Team Leader: Chrissy Wolfersberger

[illegible]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

NOV 09 2010

Mike Linder
Director
Department of Environmental Quality
P.O. Box 98922
1200 N. Street, Suite 400
Lincoln, NE 68509-8922

Dear Mr. Linder:

The purpose of this letter is to confirm that a review of the air program at the Nebraska Department of Environmental Quality (NDEQ) is due in Federal Fiscal Year 2011.

As identified in the U.S. Environmental Protection Agency (EPA) Region 7 Program Review Guidance, issued July 2008, this review will focus on programs where EPA has some oversight responsibility, including grants provided under authority of the Clean Air Act (CAA) Sections 103 & 105; air planning; air monitoring, as described in 40 CFR Part 58; air permitting, compliance, and enforcement; small business and asbestos programs.

As you know, Region 7 will be using the enforcement review protocols developed jointly by EPA and the Environmental Council of States, entitled State Review Framework. The framework provides a consistent and predictable oversight approach across states and regions. It also serves to promote equity among states - through a consistent set of elements and metrics used to review performance; consistent thresholds for corrective action; consistent general guidelines for response to continuing problems; and the provision of a level playing field for states in competition for business. If you do not have a copy of the framework, please let us know so that we can provide you with the review criteria.

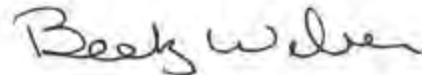
Initial scheduling of the program review has already begun between our staff, with the first in person meeting scheduled for the week of November 15, 2010, focusing on the permitting portion of the review. Other portions of the review will be scheduled

individually between staff points of contact. We will conclude with a face-to-face meeting in summer 2011, to review program accomplishments and deficiencies. Please refer to the following list for EPA staff contacts:

Air planning & grants – Chrissy Wolfersberger, 913-551-7864
Air permitting – Patricia Scott, 913-551-7312
Compliance & enforcement – Angela Catalano, 913-551-7411
Air monitoring – Bob Nichols, 913-551-5266
Asbestos - Larry Hacker, 913-551-7602

We greatly appreciate the efforts of your staff in assisting EPA with this review. If you have any comments on this process, please contact your State Manager, Chrissy Wolfersberger at (913) 551-7864, or by email at wolfersberger.chris@epa.gov.

Sincerely,



Becky Weber
Director
Air and Waste Management Division

Enclosure: EPA Region 7 Program Review Protocol

cc: Tom Lamberson, NDEQ Deputy Director
Shelley Schneider, NDEQ Air Division Administrator
Bill Rice, EPA Region 7 Deputy Administrator

Appendix 3: Nebraska Pipeline Program Review Questions

NSR Questions

1. Has the department developed any special permit application forms for pipeline compressor projects?

Response: Yes. This form is for both construction and operating permits. For both programs, the source has to submit the other standard forms. This form can be found at: [http://www.deq.state.ne.us/Publications/c4afc76e4e077e11862568770059b73f/c664b151255075e6862573a7007918f2/\\$FILE/Section%205.7%20Natural%20Gas%20and%20Pipeline%20Facility%20Information.pdf](http://www.deq.state.ne.us/Publications/c4afc76e4e077e11862568770059b73f/c664b151255075e6862573a7007918f2/$FILE/Section%205.7%20Natural%20Gas%20and%20Pipeline%20Facility%20Information.pdf).

2. Does NDEQ rely on any written policies that apply to the replacement of IC engines or turbines at pipeline compressor stations? Do they rely on policies developed by other entities (e.g. Solar whitepaper? Other states?, EPA?) If yes, please provide copies of NE policy documents and list any national or publically available documents.

Response: For NSR, we do not rely on, or have, written policies that apply to replacement engines and/or turbines. In the Title V program, we do have standard language in regard to replacements (see attached).

3. Does NDEQ perform any special outreach to the pipeline industry on NSR permitting? If yes, please describe.

Response: No specific outreach for the pipeline industry, but the Department conducts yearly general outreach to all of the regulated community. The Department uses “list serve” to notify the regulated community of regulatory updates. The announcements are made quarterly with additional notices if announcements need to be made regarding information that need to get to the regulated community more immediately. As an example – Green House Gas updates.

Title V Questions

4. Is the public commenting on pipeline Title V permits?

Response: No, but some sources submit comments.

5. Is the pipeline industry paying its Title V fees in a timely fashion? What percent of the Nebraska Title V permit program is funded by pipeline emissions?

Response: The pipeline industry has been paying their fees on time. Pipeline facilities are paying 11.9% of the Nebraska Title V permit program emission fee total.

General Permitting Program Questions

6. Is the permitting program fully funded and staffed? If not, please explain.

Response: Fully funded. The permitting section currently has one vacancy for a construction permit writer; however, the position was being advertised during the time of the on-site visit. The section is divided by operating permits and construction permits. Occasionally, the same permit writer will write both the operating permit and the construction permit if both permits need to be opened at the same time.

7. Are consultants or other non-departmental staff used to assist in permitting activities. If yes, how many and to what extent?

Response: Yes, since 2001 the Department has used two consulting firms to assist with the drafting permits. Over the past three years, these consulting firms have only been assigned operating permits. In this timeframe, the consulting firms have prepared, or are preparing:

- Approximately 9 percent of all permits issued;
- Approximately 16 percent of all operating permits; and,
- Approximately 2 percent of all construction permits.

The above numbers include initial permits, renewal permits, and permit revisions.

8. Do you have a website for the public to obtain permit-related documents? If yes, what is available? How often is it updated?

Response: Yes, copies of permit application forms and instruction are located at the following web address:

<http://www.deq.state.ne.us/Publications+Air?OpenView&Start=1&Count=250&ExpandView>

Currently the sources are not able to submit the applications from the website; however, they can copy the electronic information to a compact disk (CD) and submit the CD. The website is updated as needed. The Department is not currently posting permits or applications on their website, but they are moving toward that capability.

9. Do you ask applicants to submit a modeling protocol for approval prior to submitting modeling?

Response: Yes.

10. Do you have written agency-specific air quality modeling guidance for use by applicants? If yes, is it available on the internet? Please provide a copy.

Response: Yes, it is available on line at:

<http://www.deq.state.ne.us/Publications/c4afc76e4e077e11862568770059b73f/2b90ac35b73defe806256b1b006be5a4?OpenDocument>.

11. Have any specific policies or procedures been developed in the past five years that have contributed to permit streamlining or reduction in the amount of time or effort required to issue the permit?

Response: Yes, standard language has been developed. The sources are asked to use the standard language and format, but they may vary from it if needed.

12. Have you developed criteria or guidance regarding how monitoring is selected for permits? If yes, please provide a copy.

Response: Yes, we have draft guidance – see attached.

Appendix 4: Permitting file review questions (NSR & Title V)

| Source permit files evaluated during program review ¹ | | | |
|------------------------------------------------------------------|-------|---------------------------------------------------------------------|--------------|
| ID | AFS | Facility Name | EPA Reviewer |
| 001 | 00055 | Hasting Natural Gas | JK |
| 001 | 00058 | Kansas Avenue Peak Shaver | ES |
| 011 | 00014 | Kinder Morgan Interstate Gas Transmission – Albion | RW |
| 049 | 00007 | Kinder Morgan Interstate Gas Transmission – Big Springs | JK |
| 035 | 00025 | Kinder Morgan Interstate Gas Transmission – Clay Center | JK |
| 047 | 00056 | Kinder Morgan Interstate Gas Transmission – Cozad | ES |
| 121 | 00091 | Kinder Morgan Interstate Gas Transmission – Grand Island | PS |
| 137 | 00017 | Kinder Morgan Interstate Gas Transmission – Holdrege | JK |
| 033 | 00031 | Kinder Morgan Interstate Gas Transmission – Huntsman | PS |
| 105 | 00050 | Kinder Morgan Interstate Gas Transmission – Kimball Junction | PS |
| 047 | 00055 | Kinder Morgan Interstate Gas Transmission – Lexington | RLC |
| 111 | 00023 | Kinder Morgan Interstate Gas Transmission – North Platte | RLC |
| 033 | 00032 | Kinder Morgan Interstate Gas Transmission – West Engelland | PS |
| 067 | 00037 | Natural Gas Pipeline Company of America – Beatrice ^(KM) | RW |
| 131 | 00032 | Natural Gas Pipeline Company of America -- Syracuse ^(KM) | RLC |
| 029 | 00016 | Noble Energy – Jones Station | RLC |
| 029 | 00020 | Noble Energy – Jutten | RLC |
| 135 | 00020 | Noble Energy – Malmkar Station | RLC |
| 067 | 00036 | Northern Natural Gas – Beatrice | RW |
| 153 | 00119 | Northern Natural Gas – Bellevue | RLC |

¹ EPA is not making a compliance determination with respect to the sources listed.

| | | | |
|-----|-------|--------------------------------------------------------|----------|
| 055 | 00303 | Northern Natural Gas – Omaha | ES & RLC |
| 131 | 00029 | Northern Natural Gas – Palmyra | ES |
| 137 | 00030 | Rockies Express Pipeline – Bertrand ^(KM) | ES |
| 067 | 00086 | Rockies Express Pipeline – Steele City ^(KM) | ES |
| 111 | 00021 | Trailblazer Pipeline – Wellfleet ^(KM) | RLC |
| ? | | Trailblazer pipeline – Heartwell ^(KM) | RLC |
| 001 | 00074 | West Avenue Peak Shaver | ES |
| 049 | 00007 | Deuel County Compressor /Wells | JK |
| 105 | 00013 | Hagstrom Commingled Tank Batt | PS |
| 087 | 00015 | Meeker Canal Unit | RLC |
| 033 | 00047 | Reimers Well | PS |

(KM) Pipelines owned by Kinder Morgan

New Source Review – Construction Permits

For each source reviewed:

1. Has gas flow increased in past 10 years?
2. Have IC engines/turbines been added or replaced?
3. Other expansion or permitting activities?
4. Was netting or other techniques used to avoid PSD? List.
5. Any exemptions used to avoid review? List.
 - a. Are the techniques legitimate?
6. Any evidence of disaggregating nearby compressor stations to avoid PSD or other construction permitting? If yes, explain.
7. Any evidence source is staging multi-unit projects over time to avoid PSD review (e.g. more than one "synthetic minor" permit over a 2-3 year period)? If yes, explain.
8. Do "synthetic minor" permits adequately ensure that a source remains below the PSD thresholds?
 - a. Are the limits enforceable (e.g. numerical limits or caps, averaging time, monitoring, record keeping, reporting)?
 - b. Is there evidence the limits are being met?
9. Are "synthetic minor" permits being relaxed after the project is built (e.g. 52.21(r) (4))?
 - a. What are the implications?

10. Is modeling performed for new or replacement engines?
 - a. If so, does the modeling reveal any challenges in meeting the NAAQS (e.g. 1-hour NO_x)?
11. In general, is the source seeking construction permits for replacement of engines and turbines?
12. Are the permits timely (e.g. issued before construction commences)?
13. Any evidence in the file that NDEQ relies on written policies that apply to the replacement of IC engines or turbines at pipeline compressor stations?
14. Were construction permits put on public notice?
15. Other observations?

Title V – Operating Permits

For each source reviewed:

1. Do the title V permits incorporate all applicable requirements from construction permits? NSPS/ MACT? NESHAPS? SIP? Other?
2. In general, is the pipeline industry providing their semi- and annual compliance certification?
3. If so, is the industry reporting any broad compliance issues?
4. Any pipeline title V permits being revised during their terms?
 - a. If so, for what purpose?
 - b. Are the revisions significant?
5. Are pipeline title V permits being renewed in a timely fashion (e.g. within 18 months of receiving a complete application)?
6. Are sources making timely permit renewal applications between 6 and 18 months before expiration?
7. Is there much “flip-flop” in the pipeline industry between title V and the Class II permits?
 - a. If so, what are the general causes?
8. Is there any evidence that the pipeline industry is disaggregating nearby or adjacent compressor stations for the purpose of avoiding title V? Explain ...
9. Is there a copy of the public notice in the file?
10. Other observations?

APPENDIX 5: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of The Nebraska Department of Environmental Quality's compliance and enforcement programs, Region 7 and Nebraska identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

| State | Status | Due Date | Media | E# | Element | Finding |
|--------------|-----------|------------|-------|----------|------------------------------|--------------------------------------------------------------|
| NE - Round 1 | Completed | 12/30/2007 | CAA | E11, E12 | Data Accurate, Data Complete | AFS data accurately and timely |
| NE - Round 1 | Completed | 12/30/2007 | CAA | E8 | Penalties Collected | Enter Penalties on the correct action type |
| NE - Round 1 | Completed | 12/30/2007 | CAA | E1 | Insp Universe | No documentation that inspection report sent to the facility |
| NE - Round 1 | Completed | 7/9/2007 | CAA | E11 | Data Accurate | Facilities incorrectly coded as SM-80 |
| NE - Round 1 | Completed | 7/1/2007 | CAA | E11, E12 | Data Accurate, Data Complete | Universal Interface does not provide minimum data elements |

APPENDIX 6: OFFICIAL DATA PULL

See the 2010 Production Data. Frozen Data set was not available.

APPENDIX 7: PDA TRANSMITTAL LETTER

Appendices 7, 8, and 9 provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix 7, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

E-mail of 3/10/11 to Shelley Schneider and Todd Ellis at NDEQ:

Shelley and Todd,

On February 28, 2011, EPA Region 7 notified the Nebraska Department of Environmental Quality (NDEQ) of its intention to begin the Clean Air Act (CAA) State Review Framework (SRF) by an opening

letter (attached). As noted, the base year for review will be federal fiscal year 2010. The EPA analyzed the data against set goals and commitments, and we are now providing the analysis (also attached).

This follow-up includes EPA's preliminary data analysis of the state data metrics results, and the CAA focus areas for the upcoming on-site file review that is scheduled on March 29-30, 2011.

The ODA and the list of files to be reviewed were provided to you in advance so that you would have adequate time to compile the files that we will review and you can begin pulling together any supplemental information that may be of assistance during the review. After reviewing the attached information, if there are additional circumstances that the region should consider during the review, please provide that information to me prior to the on-site file review.

Please note that the attached preliminary findings are based only on the data metrics results themselves. Final findings may be different based upon the results of the file review and ongoing discussions with you and your staff.

All information and material used in this review may be subject to federal and/or state disclosure laws. While EPA intends to use this information only for discussions with Nebraska, it may be necessary to release information in response to a properly submitted request.

If you have questions about the SRF process or of this attachment, please let me know. Thanks.



Angela Catalano
Environmental Scientist
Air and Waste Management Division
Air Permitting and Compliance Branch
913-551-7411
FAX: 913-551-9411
Catalano.Angela@epa.gov

APPENDIX 8: PRELIMINARY DATA ANALYSIS CHART

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process, because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results. The full PDA is available in Appendix A of this report.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The full PDA contains every metric positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

Clean Air Act

| Original Data Pulled from Online Tracking Information System (OTIS) | | | | | | | | | | EPA Preliminary Analysis | |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|--------------------|----------|---------------|------------------|-------|-------|----------|-------------|--------------------------|------------------|
| Metric | Metric Description | Metric Type | Agency | National Goal | National Average | NE | Count | Universe | Not Counted | Evaluation | Initial Findings |
| 1A1-C | Title V Universe: AFS Operating Majors (Current) | Data Quality | Combined | | | 110 | NA | NA | NA | appears acceptable | |
| 1A2-C | Title V Universe: AFS Operating Majors with Air Program Code = V (Current) | Data Quality | Combined | | | 105 | NA | NA | NA | appears acceptable | |
| 1B1-C | Source Count: Synthetic Minors (Current) | Data Quality | Combined | | | 158 | NA | NA | NA | appears acceptable | |
| 1B2-C | Source Count: NESHAP Minors (Current) | Data Quality | Combined | | | 158 | NA | NA | NA | appears acceptable | |
| 1B3-C | Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current) | Informational Only | Combined | | | 230 | NA | NA | NA | appears acceptable | |
| 1C1-C | CAA Subprogram Designation: NSPS (Current) | Data Quality | Combined | | | 71 | NA | NA | NA | appears acceptable | |
| 1C2-C | CAA Subprogram Designation: NESHAP (Current) | Data Quality | Combined | | | 3 | NA | NA | NA | appears acceptable | |
| 1C3-C | CAA Subprogram Designation: MACT (Current) | Data Quality | Combined | | | 62 | NA | NA | NA | appears acceptable | |
| 1C4-S | CAA Subprogram Designation: Percent NSPS facilities with FCEs conducted after 10/1/2005 | Data Quality | State | 100% | 87.60% | 78.6% | 98 | 141 | 43 | appears acceptable | |
| 1C5-S | CAA Subprogram Designation: Percent NESHAP facilities with FCEs conducted after 10/1/2005 | Data Quality | State | 100% | 45/0% | 100% | 40 | 40 | 0 | appears acceptable | |
| 1C6-S | CAA Subprogram Designation: Percent MACT facilities with FCEs conducted after 10/1/2005 | Data Quality | State | 100% | 84.70% | 91.6% | 65 | 71 | 6 | appears acceptable | |
| 1D1-S | Compliance Monitoring: Sources with FCEs (1 FY) | Data Quality | State | | | 126 | NA | NA | NA | appears acceptable | |
| 1D2-S | Compliance Monitoring: Number of FCEs (1 FY) | Data Quality | State | | | 140 | NA | NA | NA | appears acceptable | |
| 1D3-S | Compliance Monitoring: Number of PCEs (1 FY) | Informational Only | State | | | 23 | NA | NA | NA | appears acceptable | |

| | | | | | | | | | | | |
|-------|--------------------------------------------------------------------------------------------------------------------|------------------|-------|------|--------|--------|----|----|----|--------------------|----------------|
| 1E-S | Historical Non-Compliance Counts (1 FY) | Data Quality | State | | | 37 | NA | NA | NA | potential concern | See metric 2a. |
| 1F1-S | Informal Enforcement Actions: Number Issued (1 FY) | Data Quality | State | | | 41 | NA | NA | NA | appears acceptable | |
| 1F2-S | Informal Enforcement Actions: Number of Sources (1 FY) | Data Quality | State | | | 35 | NA | NA | NA | appears acceptable | |
| 1G1-S | HPV: Number of New Pathways (1 FY) | Data Quality | State | | | 7 | NA | NA | NA | appears acceptable | |
| 1G2-S | HPV: Number of New Sources (1 FY) | Data Quality | State | | | 7 | NA | NA | NA | appears acceptable | |
| 1H1-S | HPV Day Zero Pathway Discovery date: Percent DZs reported after 10/01/2005 with discovery | Data Quality | State | 100% | 58.90% | 100.0% | 7 | 7 | 0 | appears acceptable | |
| 1H2-S | HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005 | Data Quality | State | 100% | 91% | 100.0% | 7 | 7 | 0 | appears acceptable | |
| 1H3-S | HPV Day Zero Pathway Violation Type Code(s): Percent DZs reported after 10/01/2005 with HPV Violation Type Code(s) | Data Quality | State | 100% | 91.3 | 100.0% | 7 | 7 | 0 | appears acceptable | |
| 1I1-S | Formal Action: Number Issued (1 FY) | Data Quality | State | | | 10 | NA | NA | NA | appears acceptable | |
| 1I2-S | Formal Action: Number of Sources (1 FY) | Data Quality | State | | | 10 | NA | NA | NA | appears acceptable | |
| 1J-S | Assessed Penalties: Total Dollar Amount (1 FY) | Data Quality | State | | | ##### | NA | NA | NA | appears acceptable | |
| 1K-S | Major Sources Missing CMS Policy Applicability (Current) | Review Indicator | State | | | 3 | NA | NA | NA | potential concern | |

| | | | | | | | | | | | |
|-------|---------------------------------------------------------------------------------------------------------------------|--------------|-------|---------------|--------|-------|-----|-----|-----|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | | | | | | | | The state does not appear to be reporting many sub-program compliance status or pollutant-level violations, while the state issued NOVs to major facilities that appear to be fully compliant (see 1f1). |
| 2A-S | Number of HPVs/Number of NC Sources (1 FY) | Data Quality | State | less than 50% | 45% | 116% | 7 | 7 | 0 | potential concern | |
| 2B1-S | Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY) | Goal | State | 0% | 1.30% | 0.0% | 0 | 69 | 69 | appears acceptable | |
| 2B2-S | Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY) | Data Quality | State | | | 15 | NA | NA | NA | appears acceptable | |
| 3A-S | Percent HPVs Entered less than 60 Days After Designation, Timely Entry (1 FY) | Goal | State | 100% | 35% | 0.0% | 11 | 19 | 8 | potential concern | |
| 3B1-S | Percent Compliance Monitoring related MDR actions reported more than 60 Days After Designation, Timely Entry (1 FY) | Goal | State | 100% | 60.10% | 64.6% | 203 | 314 | 111 | minor issue | Below the national goal, but above the national average. |
| 3B2-S | Percent Enforcement related MDR actions reported more than 60 Days After Designation, Timely Entry (1 FY) | Goal | State | 100% | 71% | 69.8% | 30 | 43 | 13 | potential concern | Below the national goal and below the national average. |
| 5A1-S | CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle) | Goal | State | 100% | 88.7% | 97.5% | 115 | 118 | 3 | appears acceptable | |

| | | | | | | | | | | | |
|-------|---------------------------------------------------------------------------------------------|--------------------|-------|--------------------|--------|--------|-----|-------|-------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5A2-S | CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY) | Review Indicator | State | 100% | 88.9% | 97.5% | 115 | 116 | 3 | appears acceptable | |
| 5B1-S | CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle) | Review Indicator | State | 20-100% | 85% | 92.7% | 114 | 123 | 9 | appears acceptable | |
| 5B2-S | CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY) | Informational Only | State | 20-100% | 89.1% | 96.6% | 142 | 147 | 6 | appears acceptable | |
| 5C-S | CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY) | Informational Only | State | | 81.40% | 91.2% | 165 | 181 | 16 | appears acceptable | |
| 5D-S | CAA Minor FCE and Reported PCE Coverage (last 5 FY) | Informational Only | State | | 28.60% | 6.9% | 244 | 3,533 | 3,286 | potential concern | |
| 5E-S | Number of Sources with Unknown Compliance Status (Current) | Review Indicator | State | | | 13 | NA | NA | NA | potential concern | |
| 5F-S | CAA Stationary Source Investigations (last 5 FY) | Informational Only | State | | | 0 | NA | NA | NA | appears acceptable | |
| 5G-S | Review of Self-Certifications Completed (1 FY) | Goal | State | 100% | 94% | 100.0% | 100 | 100 | 0 | appears acceptable | |
| 7C1-S | Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY) | Review Indicator | State | > 1/2 National Avg | 22.60% | 6.5% | 10 | 165 | 146 | potential concern | |
| 7C2-S | Percent facilities that have had a failed stack test and have noncompliance status (1 FY) | Review Indicator | State | > 1/2 National Avg | 46.00% | 0.0% | 0 | 9 | 9 | potential concern | |
| 8A-S | High Priority Violation Discovery Rate - Per Major Source (1 FY) | Review Indicator | State | > 1/2 National Avg | 6.50% | 2.6% | 3 | 116 | 113 | potential concern | The state is below half of the national average for HPV identification . These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered. |

| | | | | | | | | | | | |
|-------|-----------------------------------------------------------------------------------------------------------|---------------------|-------|--------------------------|--------|--------|----|-----|-----|-----------------------|----------------------------------------------------------------------------------------------------------------|
| 8B-S | High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY) | Review Indicator | State | > 1/2 National Avg | 0.4 | 0.6% | 1 | 158 | 157 | appears acceptable | |
| 8C-S | Percent Formal Actions With Prior HPV - Majors (1 FY) | Review Indicator | State | > 1/2 National Avg | 69.10% | 80.0% | 4 | 5 | 1 | appears acceptable | |
| 8D-S | Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY) | Review Indicator | State | < 1/2 National Avg | 50% | 50.0% | 5 | 10 | 5 | appears acceptable | The state is equal to the national average for informal actions without prior HPV status. |
| 8E-S | Percent Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY) | Review Indicator | State | > 1/2 National Avg | 40.7 | 50.0% | 5 | 10 | 5 | appears acceptable | |
| 10A-S | Percent HPVs not meeting timeliness goals (2 FY) | Review Indicator | State | | 35.9 | 26.7% | 4 | 15 | 11 | appears acceptable | |
| 12A-S | No Activity Indicator - Actions with Penalties (1 FY) | Review Indicator | State | | | 6 | NA | NA | NA | appears acceptable | |
| 12B-S | Percent Actions at HPVs With Penalty (1 FY) | Review Indicator | State | 80% | 88.7 | 100.0% | 3 | 3 | 0 | appears acceptable | |

APPENDIX 9: PDA WORKSHEET

| Original Data Pulled from Online Tracking Information System (OTIS) | | | | | | | | | | State Response | | | | EPA Preliminary Analysis | |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|--------------------|----------|---------------|------------------|-------|-------|----------|-------------|----------------------------|------------------|-------------------|-------------------------|--------------------------|------------------|
| Metric | Metric Description | Metric Type | Agency | National Goal | National Average | NE | Count | Universe | Not Counted | State Discrepancy (Yes/No) | State Correction | State Data Source | Discrepancy Explanation | Evaluation | Initial Findings |
| 1A1-C | Title V Universe: AFS Operating Majors (Current) | Data Quality | Combined | | | 110 | NA | NA | NA | | | | | appears acceptable | |
| 1A2-C | Title V Universe: AFS Operating Majors with Air Program Code = V (Current) | Data Quality | Combined | | | 105 | NA | NA | NA | | | | | appears acceptable | |
| 1B1-C | Source Count: Synthetic Minors (Current) | Data Quality | Combined | | | 158 | NA | NA | NA | | | | | appears acceptable | |
| 1B2-C | Source Count: NESHAP Minors (Current) | Data Quality | Combined | | | 158 | NA | NA | NA | | | | | appears acceptable | |
| 1B3-C | Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current) | Informational Only | Combined | | | 230 | NA | NA | NA | | | | | appears acceptable | |
| 1C1-C | CAA Subprogram Designation: NSPS (Current) | Data Quality | Combined | | | 71 | NA | NA | NA | | | | | appears acceptable | |
| 1C2-C | CAA Subprogram Designation: NESHAP (Current) | Data Quality | Combined | | | 3 | NA | NA | NA | | | | | appears acceptable | |
| 1C3-C | CAA Subprogram Designation: MACT (Current) | Data Quality | Combined | | | 62 | NA | NA | NA | | | | | appears acceptable | |
| 1C4-S | CAA Subprogram Designation: Percent NSPS facilities with FCEs conducted | Data Quality | State | 100% | 87.60% | 78.6% | 98 | 141 | 43 | | | | | appears acceptable | |

| | | | | | | | | | | | | | | |
|-------|-------------------------------------------------------------------------------------------|--------------------|-------|------|--------|-------|----|----|----|--|--|--|--------------------|----------------|
| | after 10/1/2005 | | | | | | | | | | | | | |
| 1C5-S | CAA Subprogram Designation: Percent NESHAP facilities with FCEs conducted after 10/1/2005 | Data Quality | State | 100% | 45/0% | 100% | 40 | 40 | 0 | | | | appears acceptable | |
| 1C6-S | CAA Subprogram Designation: Percent MACT facilities with FCEs conducted after 10/1/2005 | Data Quality | State | 100% | 84.70% | 91.6% | 65 | 71 | 6 | | | | appears acceptable | |
| 1D1-S | Compliance Monitoring: Sources with FCEs (1 FY) | Data Quality | State | | | 126 | NA | NA | NA | | | | appears acceptable | |
| 1D2-S | Compliance Monitoring: Number of FCEs (1 FY) | Data Quality | State | | | 140 | NA | NA | NA | | | | appears acceptable | |
| 1D3-S | Compliance Monitoring: Number of PCEs (1 FY) | Informational Only | State | | | 23 | NA | NA | NA | | | | appears acceptable | |
| 1E-S | Historical Non-Compliance Counts (1 FY) | Data Quality | State | | | 37 | NA | NA | NA | | | | potential concern | See metric 2a. |
| 1F1-S | Informal Enforcement Actions: Number Issued (1 FY) | Data Quality | State | | | 41 | NA | NA | NA | | | | appears acceptable | |
| 1F2-S | Informal Enforcement Actions: Number of Sources (1 FY) | Data Quality | State | | | 35 | NA | NA | NA | | | | appears acceptable | |
| 1G1-S | HPV: Number of New Pathways (1 FY) | Data Quality | State | | | 7 | NA | NA | NA | | | | appears acceptable | |
| 1G2-S | HPV: Number of New Sources (1 FY) | Data Quality | State | | | 7 | NA | NA | NA | | | | appears acceptable | |

| | | | | | | | | | | | | | | | |
|-------|--------------------------------------------------------------------------------------------------------------------------|------------------|-------|------|--------|-----------|----|----|----|--|--|--|--|--------------------|--|
| 1H1-S | HPV Day Zero Pathway Discovery date: Percent DZs reported after 10/01/2005 with discovery | Data Quality | State | 100% | 58.90% | 100.0% | 7 | 7 | 0 | | | | | appears acceptable | |
| 1H2-S | HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005 | Data Quality | State | 100% | 91% | 100.0% | 7 | 7 | 0 | | | | | appears acceptable | |
| 1H3-S | HPV Day Zero Pathway Violation Type Code(s): Percent DZs reported after 10/01/2005 with HPV Violation Type Code(s) | Data Quality | State | 100% | 91.3 | 100.0% | 7 | 7 | 0 | | | | | appears acceptable | |
| 1I1-S | Formal Action: Number Issued (1 FY) | Data Quality | State | | | 10 | NA | NA | NA | | | | | appears acceptable | |
| 1I2-S | Formal Action: Number of Sources (1 FY) | Data Quality | State | | | 10 | NA | NA | NA | | | | | appears acceptable | |
| 1J-S | Assessed Penalties: Total Dollar Amount (1 FY) | Data Quality | State | | | \$233,363 | NA | NA | NA | | | | | appears acceptable | |
| 1K-S | Major Sources Missing CMS Policy Applicability (Current) | Review Indicator | State | | | 3 | NA | NA | NA | | | | | potential concern | |

| | | | | | | | | | | | | | | | |
|-------|-----------------------------------------------------------------------------------------|--------------|-------|---------------|--------|-------|-----|-----|-----|--|--|--|--|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2A-S | Number of HPVs/Number of NC Sources (1 FY) | Data Quality | State | less than 50% | 45% | 116% | 7 | 7 | 0 | | | | | potential concern | The state does not appear to be reporting many sub-program compliance status or pollutant-level violations, while the state issued NOVs to major facilities that appear to be fully compliant (see 1f1). |
| 2B1-S | Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY) | Goal | State | 0% | 1.30% | 0.0% | 0 | 69 | 69 | | | | | appears acceptable | |
| 2B2-S | Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY) | Data Quality | State | | | 15 | NA | NA | NA | | | | | appears acceptable | |
| 3A-S | Percent HPVs Entered less than 60 Days After Designation, Timely Entry (1 FY) | Goal | State | 100% | 35\$ | 0.0% | 11 | 19 | 8 | | | | | potential concern | |
| 3B1-S | Percent Compliance Monitoring related MDR actions reported more than 60 Days After | Goal | State | 100% | 60.10% | 64.6% | 203 | 314 | 111 | | | | | minor issue | Below the national goal, but above the national average. |

| | | | | | | | | | | | | | | |
|-------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------|---------|--------|-------|-----|-------|-------|--|--|--|--|----------------------------------------------------------------------------------------------------|
| | Designation, Timely Entry (1 FY) | | | | | | | | | | | | | |
| 3B2-S | Percent Enforcement related MDR actions reported more than 60 Days After Designation, Timely Entry (1 FY) | Goal | State | 100% | 71% | 69.8% | 30 | 43 | 13 | | | | | potential concern Below the national goal and below the national average. |
| 5A1-S | CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle) | Goal | State | 100% | 88.7% | 97.5% | 115 | 118 | 3 | | | | | appears acceptable |
| 5A2-S | CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY) | Review Indicator | State | 100% | 88.9% | 97.5% | 115 | 116 | 3 | | | | | appears acceptable |
| 5B1-S | CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle) | Review Indicator | State | 20-100% | 85% | 92.7% | 114 | 123 | 9 | | | | | appears acceptable |
| 5B2-S | CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY) | Informat ional Only | State | 20-100% | 89.1% | 96.6% | 142 | 147 | 6 | | | | | appears acceptable |
| 5C-S | CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY) | Informat ional Only | State | | 81.40% | 91.2% | 165 | 181 | 16 | | | | | appears acceptable |
| 5D-S | CAA Minor FCE and Reported PCE Coverage (last 5 FY) | Informat ional Only | State | | 28.60% | 6.9% | 244 | 3,533 | 3,286 | | | | | potential concern |

| | | | | | | | | | | | | | | | |
|-------|---------------------------------------------------------------------------------------------|--------------------|-------|--------------------|--------|--------|-----|-----|-----|--|--|--|--|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5E-S | Number of Sources with Unknown Compliance Status (Current) | Review Indicator | State | | | 13 | NA | NA | NA | | | | | potential concern | |
| 5F-S | CAA Stationary Source Investigations (last 5 FY) | Informational Only | State | | | 0 | NA | NA | NA | | | | | appears acceptable | |
| 5G-S | Review of Self-Certifications Completed (1 FY) | Goal | State | 100% | 94% | 100.0% | 100 | 100 | 0 | | | | | appears acceptable | |
| 7C1-S | Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY) | Review Indicator | State | > 1/2 National Avg | 22.60% | 6.5% | 10 | 165 | 146 | | | | | potential concern | |
| 7C2-S | Percent facilities that have had a failed stack test and have noncompliance status (1 FY) | Review Indicator | State | > 1/2 National Avg | 46.00% | 0.0% | 0 | 9 | 9 | | | | | potential concern | |
| 8A-S | High Priority Violation Discovery Rate - Per Major Source (1 FY) | Review Indicator | State | > 1/2 National Avg | 6.50% | 2.6% | 3 | 116 | 113 | | | | | potential concern | The state is below half of the national average for HPV identification. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered. |
| 8B-S | High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 | Review Indicator | State | > 1/2 National Avg | 0.4 | 0.6% | 1 | 158 | 157 | | | | | appears acceptable | |

| | | | | | | | | | | | | | | |
|-------|--------------------------------------------------------------------------------------------------|------------------|-------|--------------------|--------|--------|----|----|----|--|--|--|--|-----------------------------------------------------------------------------------------------------------------|
| | FY) | | | | | | | | | | | | | |
| 8C-S | Percent Formal Actions With Prior HPV - Majors (1 FY) | Review Indicator | State | > 1/2 National Avg | 69.10% | 80.0% | 4 | 5 | 1 | | | | | appears acceptable |
| 8D-S | Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY) | Review Indicator | State | < 1/2 National Avg | 50% | 50.0% | 5 | 10 | 5 | | | | | appears acceptable The state is equal to the national average for informal actions without prior HPV status. |
| 8E-S | Percent Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY) | Review Indicator | State | > 1/2 National Avg | 40.7 | 50.0% | 5 | 10 | 5 | | | | | appears acceptable |
| 10A-S | Percent HPVs not meeting timeliness goals (2 FY) | Review Indicator | State | | 35.9 | 26.7% | 4 | 15 | 11 | | | | | appears acceptable |
| 12A-S | No Activity Indicator - Actions with Penalties (1 FY) | Review Indicator | State | | | 6 | NA | NA | NA | | | | | appears acceptable |
| 12B-S | Percent Actions at HPVs With Penalty (1 FY) | Review Indicator | State | 80% | 88.7 | 100.0% | 3 | 3 | 0 | | | | | appears acceptable |

APPENDIX 10: FILE SELECTION

Files to be reviewed are selected according to a standard protocol (available here: http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf) and using a web-based file selection tool (available here: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A below, states should be able to recreate the results in the table in section B.

A. File Selection Process

EPA followed the SRF File Selection Protocol when selecting the files. This includes a representative sample of files, and may include supplemental file review. Under the SRF protocol, EPA is required to review additional files to help better understand whether any areas of concern identified via the data review are substantiated. EPA requested 25 files for the CAA portion of the SRF review. The representative file selection method was conducted using the methodology described in the File Section Protocol (using the OTIS website). Of the files, ten will be examined because the facility had a compliance evaluation or compliance monitoring report noted in the base review year, and ten will be examined because an enforcement action was taken. The evaluation files include a mix of facilities which include various compliance histories in the national system. If an evaluation file had an enforcement action associated with it, both activities will be reviewed (and vice-versa when a selected action has an evaluation file). An additional two supplemental files will be examined to assess Nebraska's HPV designation and reporting process that is noted in the Preliminary Data Analysis table, with two supplemental files to assess informal actions with no violation designation. Supplemental file reviews are used to ensure that the region has enough files to look at to understand whether a potential problem pointed out by data analysis is in fact a problem.

B. File Selection Table

| Name | Program ID | City | FC E | PCE | Violation | Stack Test Failure | Title V Deviation | HPV | Informal Action | Formal Action | Penalty | Universe | Select |
|------------------------------------|------------|----------------|---------|-----|-----------|-----------------------|----------------------|-----|--------------------|------------------|---------|----------|-----------------------------|
| ABE FAIRMONT LLC | 3105900030 | FAIRMONT | 1 | 2 | 0 | 1 | 0 | 1 | 3 | 0 | 0 | MAJR | accepted_re presentative |
| ABENGOA BIOENERGY CORP. | 3118500030 | YORK | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 40,000 | MAJR | accepted_re presentative |
| ABENGOA BIOENERGY OF NEB | 3101900095 | RAVENNA | 0 | 0 | 0 | 2 | 0 | 1 | 1 | 1 | 98,000 | SM80 | accepted_re presentative |
| AGP CORN PROCESSING INC | 3100100064 | HASTINGS | 1 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| AGP SOY PROCESSING | 3100100062 | HASTINGS | 0 | 0 | 0 | 2 | 0 | 1 | 3 | 0 | 0 | MAJR | accepted_re presentative |
| APACHE MANUFACTURING | 3111900078 | NORFOLK | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | SM80 | accepted_re presentative |
| BD MEDICAL SYSTEMS | 3114100006 | COLUMBUS | 1 | 0 | 8 | 0 | 0 | 1 | 1 | 0 | 0 | MAJR | accepted_re presentative |
| DAVID CITY MUNICIPAL POWER | 3102300019 | DAVID CITY | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| EARTHGRAINS BAKING COMPANIES | 3115300041 | BELLEVUE | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| EILERS MACHINE & WELDING INC | 3104700115 | LEXINGTON | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | SM80 | accepted_re presentative |
| EVEN TEMP INC | 3118500042 | WACO | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | SM80 | accepted_re presentative |
| FLOWSERVE | 3100100001 | HASTINGS | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | SM80 | accepted_re presentative |
| KMIGT HOLDREGE COMPRESSOR | 3113700017 | HOLDREGE | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| LINDSAY MANUFACTURING CO | 3114100025 | LINDSAY | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | SM80 | accepted_re presentative |
| LON D WRIGHT POWER PLANT | 3105300001 | FREMONT | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| MIDWEST RENEWABLE ENERGY LLC | 3111100027 | SUTHERLAN D | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | SM80 | accepted_re presentative |
| NATUREWORKS LLC | 3117700052 | BLAIR | 1 | 0 | 4 | 0 | 0 | 0 | 0 | 1 | 80,000 | MAJR | accepted_re presentative |

| | | | | | | | | | | | | | |
|-------------------------------------|------------|------------|---|---|---|---|---|---|---|---|---|------|-----------------------------|
| NEBRASKA CORN PROCESSING LLC | 3106500021 | CAMBRIDGE | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | SM80 | accepted_re presentative |
| NEDAK ETHANOL LLC | 3108900044 | ATKINSON | 1 | 1 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | SM80 | accepted_re presentative |
| NPPD MC COOK PEAKING UNIT | 3114500013 | MC COOK | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| NU-TEIN LLC | 3104700050 | COZAD | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | SM80 | accepted_re presentative |
| PLATTE GENERATING STATION | 3107900606 | GRAND ISL | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |
| STEELE CITY COMPRESSOR STATIO | 3106700086 | ODELL | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | SM80 | accepted_re presentative |
| UNION PACIFIC RAILROAD | 3111100081 | NORTH PLAT | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | MAJR | accepted_re presentative |

APPENDIX 11: FILE REVIEW ANALYSIS

This section presents the initial observations of the Region 7 regarding program performance against file metrics. Initial Findings are developed by the region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state has occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section VI of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Name of State: NEBRASKA

Review Period: 2010

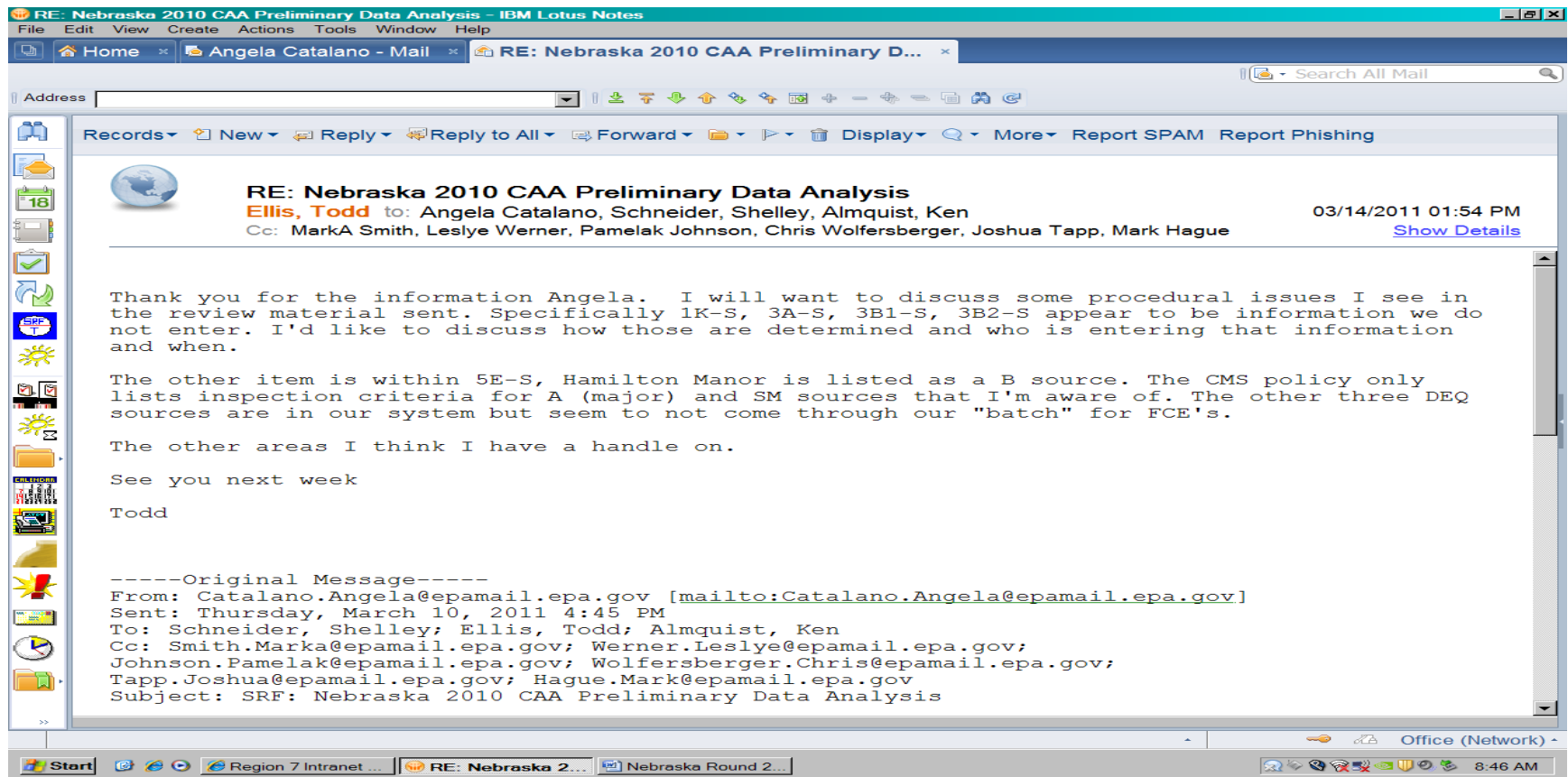
| CAA Metric # | CAA File Review Metric Description: | Metric Value | Initial Findings |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Metric 2c | % of files reviewed where MDR data are accurately reflected in AFS. | 75% | 18 of the 24 files reviewed contained documentation to confirm that the MDRs were reported accurately into AFS (20 FCEs, 8 PCEs, and 10 enforcement responses were reviewed while 15 of the FCEs, 8 of the PCEs, and 8 of the enforcement responses were accurate). |
| Metric 4a | Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan was completed. Did the state/local agency complete all planned evaluations negotiated in a CMS plan? Yes or no? If a state/local agency implemented CMS by following a traditional CMS plan, details concerning evaluation coverage are to be discussed pursuant to the metrics under Element 5. If a state/local agency had negotiated and received | 100% | NDEQ committed to conducting a traditional CMS plan that includes FCEs at 100% of the major sources over 2 years and 100% of SM-80s over 5 years. During the review period (FY 2010, the state committed to conducting FCEs at 74 majors and 84 SM-80s. The state completed all of these FCEs based on the data provided in Metrics 5a1 and 5b1. |

| | | | |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | approval for conducting its compliance monitoring program pursuant to an alternative plan, details concerning the alternative plan and the S/L agency's implementation (including evaluation coverage) are to be discussed under this Metric. | | |
| Metric 4b | Delineate the air compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The compliance and enforcement commitments should be delineated. | NA | <p>The state made commitments in the PPG to enter all CAA MDRs into AFS accurately and in a timely manner. Based on the data metrics and review of files, the state maintained an accuracy rate of over 80% and a timeliness rate of nearly 90%.</p> <p>Nebraska committed to updating data screens to reflect MDRs for TV compliance deviations. This will be completed by 12/21/11</p> |
| Metric 6a | # of files reviewed with FCEs. | | 19 FCEs were reviewed. |
| Metric 6b | % of FCEs that meet the definition of an FCE per the CMS policy. | 100% | ALL FCEs reviewed had documentation in the files to show that they contained all of the elements of the FCE, per the CMS. |
| Metric 6c | % of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility. | 100% | CMRs reviewed contained all of the CMR requirements listed in the CMS and they contain sufficient documentation to determine compliance at the facility. |
| Metric 7a | % of CMRs or facility files reviewed that led to accurate compliance determinations. | 100% | CMRs reviewed led to an accurate compliance determination. |
| Metric 7b | % of non-HPVs reviewed where the compliance determination was timely reported to AFS. | 100% | 3 non HPVs were reported timely (Less than 30 days) to AFS. |
| Metric 8f | % of violations in files reviewed that were accurately determined to be HPV. | 100% | 2 AG referrals and 2 administrative orders were reviewed. A total of 10 NOV's were documented at 7 facilities. Of these 10 NOV's, 10 were accurately determined to HPV. |
| Metric 9a | # of formal enforcement responses reviewed. | 3 | 3 formal enforcement responses were reviewed. |

| | | | |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Metric 9b | % of formal enforcement responses that include required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame. | 60% | Formal enforcement responses contained the documentation that required the facilities to return to compliance. A settlement agreement had not been reached for one facility. |
| Metric 10b | % of formal enforcement responses for HPVs reviewed that are addressed in a timely manner (i.e., within 270 days). | 80% | 12 of the 15 HPVs were addressed in a timely manner. No lead changes were made to EPA.. Therefore 12 out of 15 HPVs were addressed in a timely manner by the state. The average time to address HPVs was 110 days. |
| Metric 10c | % of enforcement responses for HPVs appropriately addressed. | 100% | 4 of the HPVs were addressed with a formal enforcement response. 8 of the HPVs were addressed with informal responses. 3 of those orders were penalty. 5 HPVs were referred to the AG's office. While informal responses to HPVs are not considered appropriate, these responses had the effect of bringing the facilities into compliance. Therefore, 20 of the 20 HPVs were appropriately addressed. |
| Metric 11a | % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit. | 0% | 3 of the formal enforcement responses reviewed considered only gravity and not the economic benefit of not complying |
| Metric 12c | % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. | 100% | The files for enforcement responses reviewed contained documentation for the rationale between the initial and the final assess penalty. In general, the state does not keep records of initial vs. final penalties. The penalty assessed is the only penalty that is documented in the file. |
| Metric 12d | % of files that document collection of penalty. | 0% | No files contained documentation that the penalty was collected. |

APPENDIX 12: CORRESPONDENCE

E-mail of 3/14/11 from Todd Ellis to Angela Catalano.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

April 22, 2011

Nebraska Air Program Review:
Appendix 13

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Support of Region 7 Efforts to Obtain Complete Inventory Information From the City of Omaha Public Works Department for Their 2008 and Future Submissions to the National Emission Inventory (NEI) Program

FROM: Richard A. Wayland, Director *Richard A. Wayland*
Air Quality Assessment Division (C304-02)

TO: Joshua A. Tapp
Air Planning and Development Branch, Region 7 (AWMDAPDB)

With this memorandum, the Air Quality Analysis Division (AQAD) of the Office of Air Quality Standards and Planning (OAQPS) would like to express our support of Region 7 efforts to obtain complete inventory information from the City of Omaha Public Works Department for their 2008 and future submissions to the NEI program. Our AQAD staff have observed that the existing point source data submitted by Omaha for the 2008 NEI lacks a complete accounting of the process-level detail that is required by the Air Emissions Reporting Rule (AERR, 40 CFR Part 51). The process-level data is specified as the Source Classification Code (SCC) and is critical to EPA's accurate compilation and use of the data. The SCC is required as specified in Table 2a of Appendix A of the AERR and the accompanying text as follows:

You must report the data elements in Tables 2a through 2c in Appendix A of this subpart... (d) Confidential Data. We do not consider the data in Tables 2a through 2c in Appendix A of this subpart confidential, but some states limit release of this type of data. Any data that you submit to EPA under this subpart will be considered in the public domain and cannot be treated as confidential. If Federal and state requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

It is our understanding that to date, Omaha has claimed that they cannot report the process-level data from the facilities because of confidentiality issues with the reporting facilities. We have confirmed that in the 2008 NEI, no other reporting agencies submit criteria pollutants emissions data at the facility total with a generic SCC, and that no other agency is claiming confidentiality issues with the SCC codes and process-level information. In the case of the data submission from Omaha, the state of Nebraska reports process details using SCCs for the rest of the state's facilities. Furthermore, the 2008 NEI data show that Omaha is claiming confidentiality for companies for which process-level detail is provided by other reporting agencies.

One example of a large corporation in the Omaha reporting jurisdiction is Conagra, which has Conagra North and Conagra South facilities flour milling operations in the Omaha area. Conagra also has flour milling operations in California, Colorado, Illinois, and Minnesota. These states provided process-level detail in their emissions for these Conagra facilities for the SCCs shown in Attachment A. There are other similar examples such as the LaFarge Group's Cement facility, for which other states provide detailed data that Omaha claims is confidential for these facilities.

I would like to express my division's strong support for Region 7's effort to require the process-level details to be provided from Omaha or some other mechanism to meet the requirements of the AERR and any grant requirements with Region 7. My staff will continue to support Omaha's needs for assistance in making these data available at the earliest possible date.

Attachment

Attachment A

Process level details for Conagra Flour Milling operations provided by other NEI reporting agencies in California, Colorado, Illinois, and Minnesota.

| SCC | SCC Description |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10200404 | External Combustion Boilers; Industrial; Residual Oil; Grade 5 Oil |
| 10200602 | External Combustion Boilers; Industrial; Natural Gas; 10-100 Million Btu/hr |
| 10200603 | External Combustion Boilers; Industrial; Natural Gas; < 10 Million Btu/hr |
| 20300101 | Internal Combustion Engines; Commercial/Institutional; Distillate Oil (Diesel); Reciprocating |
| 30200501 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Shipping/Receiving |
| 30200507 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Removal from Bins (Tunnel Belt) |
| 30200508 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Elevator Legs (Headhouse) |
| 30200513 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Fumigation Tanks |
| 30200530 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Headhouse & Internal Handling (legs, belts, distributors, scale, etc.) |
| 30200551 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Unloading (Receiving) from Straight Trucks |
| 30200560 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Loading (Shipping) into Trucks (unspecified type) |
| 30200563 | Industrial Processes; Food and Agriculture; Feed and Grain Terminal Elevators; Loading (Shipping) into Railcars |
| 30200699 | Industrial Processes; Food and Agriculture; Feed and Grain Country Elevators; General |
| 30200721 | Industrial Processes; Food and Agriculture; Grain Millings; Rye: Grain Receiving |
| 30200730 | Industrial Processes; Food and Agriculture; Grain Millings; General ** |
| 30200731 | Industrial Processes; Food and Agriculture; Grain Millings; Wheat: Grain Receiving |
| 30200732 | Industrial Processes; Food and Agriculture; Grain Millings; Wheat: Precleaning/Handling |
| 30200733 | Industrial Processes; Food and Agriculture; Grain Millings; Wheat: Cleaning House |
| 30200734 | Industrial Processes; Food and Agriculture; Grain Millings; Wheat: Millhouse |
| 30290003 | Industrial Processes; Food and Agriculture; Fuel Fired Equipment; Natural Gas: Process Heaters |
| 30299998 | Industrial Processes; Food and Agriculture; Other Not Specified; Other Not Classified |

STATE OF NEBRASKA



E. Benjamin Nelson
Governor

Nebraska Air Program Review: Appendix 14

December 31, 1997

Gregg Wright, M.D., Interim Director
Lincoln-Lancaster County Health Department
3140 'N' Street
Lincoln, NE 68510-1514

Marsha W. Welsch, Thoden
copy for
ie. Fisher
DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director

Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922

Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

RECEIVED

DEC 30 1997

HEALTH-ADM.

RE: Prevention of Significant Deterioration Program

Dear Dr. Wright:

This letter is in response to the Lincoln-Lancaster County Health Department (LLCHD) request to be delegated authority to implement and enforce the Prevention of Significant Deterioration (PSD) program. In accordance with §81-1504 (3) and (23), the Nebraska Department of Environmental Quality (NDEQ) hereby delegates to the LLCHD, on behalf of the City of Lincoln and Lancaster County, the authority to implement and enforce all applicable provisions of NDEQ Title 129 - Nebraska Air Quality Regulations, Chapter 19. This delegation is subject to the following conditions:

1. Each PSD permit issued by LLCHD shall state that the permit is an NDEQ permit and is being issued pursuant to this delegation;
2. Each permit issued by LLCHD pursuant to this delegation shall include the following statement immediately above the signature block:
"Pursuant to the December 31, 1997 Delegation Letter, signed by the Director of the Department of Environmental Quality, the undersigned hereby executes this document on behalf of the Director of the Department.";
3. Each permit issued by LLCHD pursuant to this delegation shall state that the permit is being issued pursuant to Title 129 - Nebraska Air Quality Regulations (Title 129), Chapter 19, and is subject to all terms and conditions of Title 129 and the Nebraska Revised Statutes;
4. LLCHD shall provide the NDEQ with a copy of each PSD permit application and all subsequent revisions within a week of receipt;
5. LLCHD shall follow the public participation and decision-making procedures in Title 129, Chapter 19, section 004 and shall transmit documents and notifications to the EPA, as required by section 005, and to the NDEQ;

6. One week prior to publication of the Public Notice, LLCHD shall submit to the NDEQ a preliminary determination package for review. This package should include the Fact Sheet, Draft Permit, Public Notice and a list of the documents comprising the Administrative Record, or in the case of a permit denial, the Notice of Intent to Deny and all other relevant documents;
7. NDEQ shall complete its review of the draft permit and other pertinent information during the 30-day public comment period. If no comments are received by the 30th day, LLCHD shall assume NDEQ has completed its review and has no comments;
8. LLCHD shall notify the NDEQ in advance of any public hearing that may be scheduled as a result of the PSD permit review;
9. LLCHD shall submit to the NDEQ a final determination package including the final PSD Permit or denial, and the Response to Comments documents, if one exists, and any other documents relevant to the issuance of the permit. LLCHD shall also provide a response to any adverse comments received from NDEQ or EPA on the draft permit;
10. LLCHD will cooperate as requested by the NDEQ in the case of any appeals of the final action;
11. LLCHD shall take timely and appropriate enforcement action when violations of Title 129, Chapter 19 are discovered; and,
12. The NDEQ reserves the right to determine that a particular permit has not been issued in accordance with the requirements of Title 129, Chapter 19, or this delegation. In such case, the permit shall not be deemed a permit issued pursuant to those requirements.

This delegation is solely to the Lincoln-Lancaster County Health Department and does not authorize the LLCHD to delegate the PSD provisions to any other local agency. If at any time there is a conflict between a local regulation and the applicable State or Federal regulations, the more stringent regulation must be applied.

If the Director of the NDEQ determines that the LLCHD's implementation of the PSD regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. The NDEQ will notify the LLCHD of the deficiencies, will specify appropriate corrective measures, and will allow the LLCHD a reasonable time to implement those measures. Any such revocation, suspension, or modification shall be effective as of the date of the letter notifying the LLCHD of the NDEQ's action. In all cases, the NDEQ retains its concurrent authority to implement and enforce the PSD

requirements under the Nebraska Environmental Protection Act and Title 129 and may reclaim authority over any permit at any time, prior or post issuance.

To indicate concurrence in this delegation, we request the signature of approval of the Director, Lincoln-Lancaster County Health Department, on this original letter. A copy is enclosed for your records. Please return the original to this office by January 9, 1998.

Sincerely,

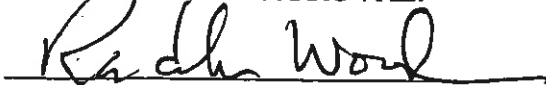


Randolph Wood, P.E.

Director,

Nebraska Department of Environmental
Quality

SIGNATURE OF APPROVAL:



DATE:

12-24-97

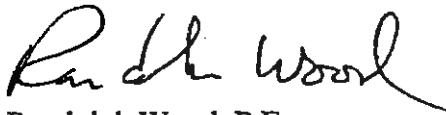
Enclosure

cc: Dennis Grams
USEPA Region VII
Marcia Willhite
LLCHD

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Sincerely,

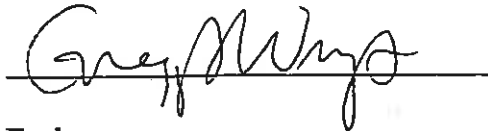


Randolph Wood, P.E.

Director,

Nebraska Department of Environmental
Quality

SIGNATURE OF APPROVAL:

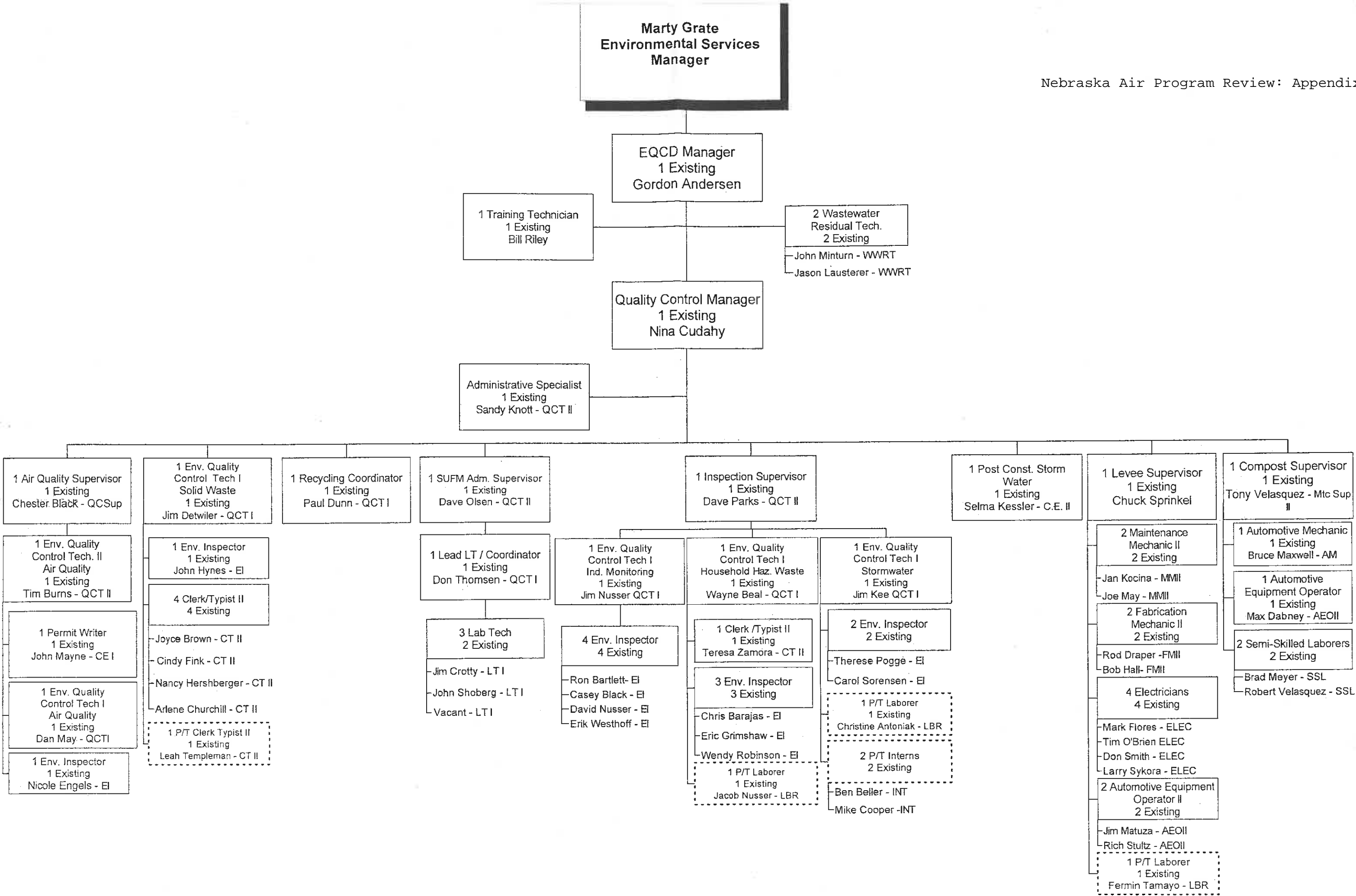


DATE:

1/7/98

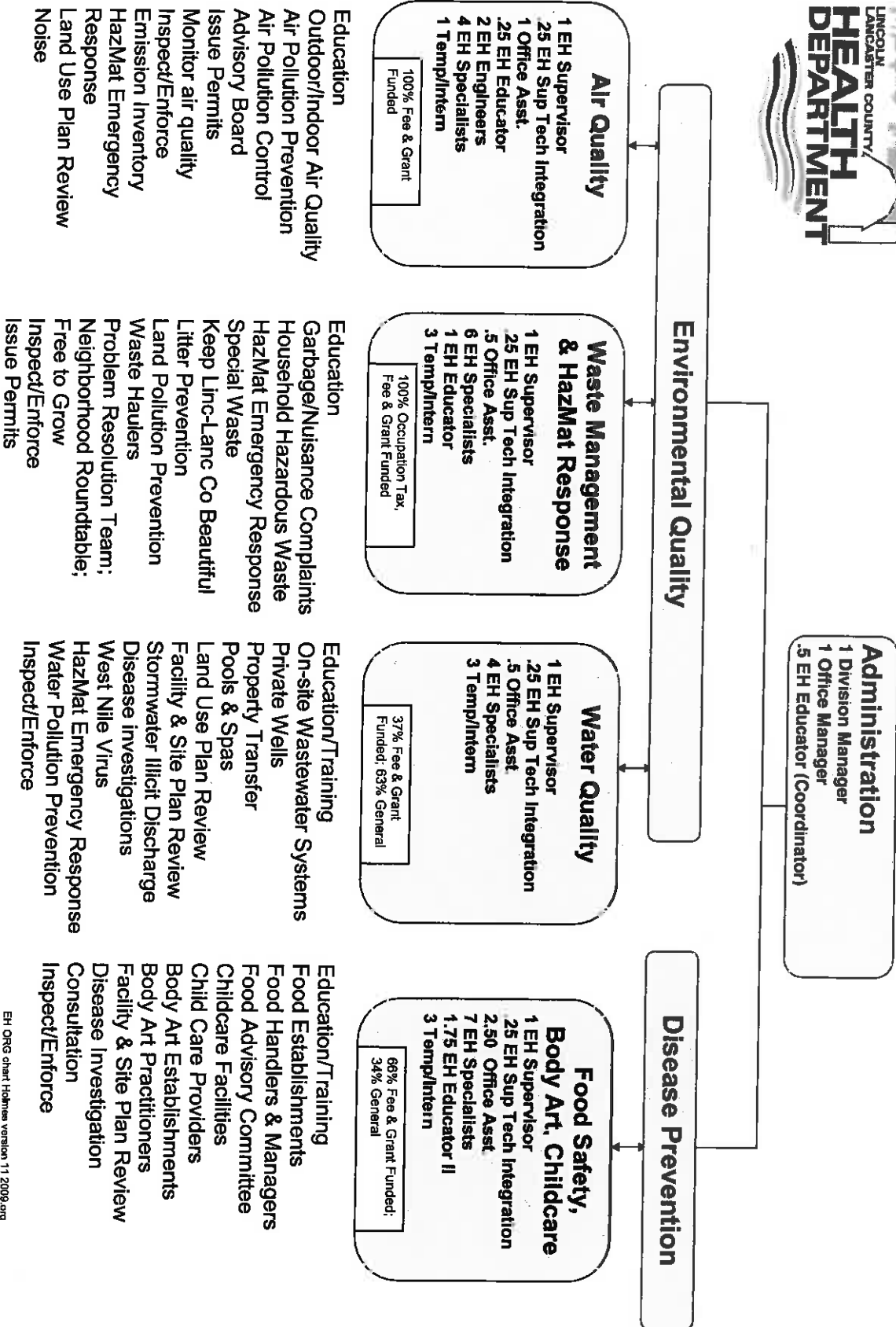
Enclosure

cc: Dennis Grams
USEPA Region VII
Marcia Willhite
LLCHD





Environmental Public Health



Nebraska Air Program
Review: Appendix 16

* Funding percentages reflect FY 2008 actual data. Percentages vary by year.
** Chart Updated 6, 2009 and reflects current staffing levels



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Nebraska Air Program
Review: Appendix 17

APR 27 2011

OFFICE OF
THE REGIONAL ADMINISTRATOR

Mr. Mike Linder
Director
Nebraska Department of Environmental Quality
P.O. Box 98922
1200 N. Street, Suite 400
Lincoln, NE 68509-8922

Dear Mr. Linder:

The purpose of this letter is to implement an agreement between Nebraska Department of Environmental Quality, and this EPA Regional Office as to the number and types of copies that are to be submitted when requesting approval of a revision to your State Implementation Plan (SIP) under the Clean Air Act and 40 CFR Part 51. The National SIP Reform Workgroup comprised of representatives of the Environmental Protection Agency (EPA), the Environmental Council of the States (ECOS), and the National Association of Clean Air Agencies (NACAA) identified a number of SIP issues related to consistency among the ten Regional Offices. Among those issues was that the number and types of copies required to be submitted when requesting approval of a SIP revision varied from Region to Region. Both ECOS and NACAA asked that this be standardized by all ten Regions for consistency and to reduce, to the extent legally possible, the number of hard copy (paper) submittals. As a result of the workgroup's efforts, the enclosed memorandum, entitled, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices" was signed by Janet McCabe, Deputy Assistant Administrator of EPA's Office of Air and Radiation (OAR) on April 6, 2011.

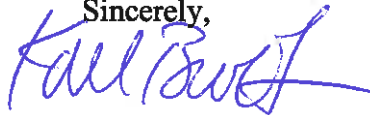
Attachment A of the enclosed memorandum standardizes the number and types of copies that each Regional Office will henceforth require from the environmental agencies authorized to submit SIP revisions located in that Region. Attachment B provides, in writing, the long awaited reforms made to the public notice and hearing requirements for SIP revisions. Both ECOS and NACAA have estimated that these reforms will save their member agencies hundreds of thousands of dollars annually. Attachments C and D of the memorandum clarify the differences between a clean data determination for a nonattainment area and the redesignation of an area from nonattainment to attainment, and the types of SIP revisions eligible for approval by "Letter Notice" versus full "notice and comment" rulemaking. Nothing in the attachments to this memorandum requires changes to the Clean Air Act or current Federal regulations.



To implement the reforms made to the number and types of copies that must be submitted when requesting a SIP revision, it is necessary for each Regional Office to have a record of an agreement with each agency authorized to submit SIP revisions stating that the procedures outlined in Attachment A will be followed. By this letter, Region 7 is hereby agreeing to the procedures of Attachment A of the enclosed April 6, 2011 memorandum, entitled, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices" for SIP submittals from Nebraska Department of Environmental Quality, and assume that you agree to these procedures unless we hear otherwise from you by May 20, 2011.

Region 7 is pleased to implement these reforms and will continue to work through the National SIP Reform Workgroup to address additional issues to improve the SIP process identified by ECOS and NACAA. If you have any questions please do not hesitate to call me or Becky Weber, Region 7 Air and Waste Management Division Director at (913) 551-7487.

Sincerely,



Karl Brooks
Regional Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 6 2011

OFFICE OF
AIR AND RADIATION

SUBJECT: Regional Consistency for the Administrative Requirements of
State Implementation Plan Submittals and the Use of "Letter Notices"

FROM: Janet McCabe, Deputy Assistant Administrator *JSM*
Office of Air & Radiation

TO: Regional Administrators, Regions I - X

The National State Implementation Plan (SIP) Reform Workgroup is a cooperative initiative between EPA, the National Association of Clean Air Agencies (NACAA), and the Environmental Council of the States (ECOS), and includes representatives from Sacramento, California; Linn County, Iowa; Kentucky; Maryland; Nevada; New York; Ohio; South Carolina, Utah and Wisconsin, as well as EPA's Office of Air and Radiation (OAR), EPA Regions I, III and VII and the ECOS and NACAA Headquarters offices. It is facilitated by Jim Blizzard of ECOS, Nancy Kruger of NACAA, and Carey Fitzmaurice of OAR. The ECOS and NACAA memberships have identified a number of SIP-related issues for improving the entire "SIP Process" from the time EPA promulgates a new or revised NAAQS through to the time of formal submittals to Regional Offices for completeness determinations and rulemakings. Given these issues identified by ECOS and NACAA, as well as our own recognition that the SIP process needs to be improved and streamlined, there are a number of ongoing initiatives related to SIP Reform. Many of the ECOS/NACAA-identified SIP reform issues involve EPA providing states and localities the opportunity to participate upfront in such things as designation procedures, implementation rules, and other forms of national SIP guidance related to modeling, weight of evidence (WOE), etc. Tackling these SIP reform issues requires action on the part of OAR, and representatives from OAQPS are actively participating on the Workgroup. However, many of the ECOS/NACAA-identified issues center around Regional consistency. The Regional Air Division Directors and Air Program Managers agree that addressing these issues is primarily the Regions' responsibility.

The purpose of this memorandum is to address the first group of issues identified by the Workgroup. These issues involve consistency between all ten Regional Offices and represent the first increment of success in this collective effort to improve the SIP process. Attachment A's focus is to standardize what every Regional Office requires from its State, Local, and Tribal agencies when those agencies formally submit a SIP revision (hereafter the term State will be used to mean all those agencies formally authorized to submit SIPs and TIPs) and to simplify

those requirements where possible. It addresses the issue raised by ECOS and NACAA urging EPA to reduce the number of hard paper copies required when submitting SIP revisions.

The other attachments to this memorandum cover issues related to the public notice and hearing requirements for SIP revisions, the differences between Clean Data Determinations and Redesignations, and the types of SIP revisions eligible for approval by "Letter Notice" versus full "notice and comment" rulemaking.

Nothing in the attachments to this memorandum is intended to require changes to the Clean Air Act (CAA), the current Code of Federal Regulations (CFR) at 40 CFR Part 51 or Appendix V to Part 51. However, with regard to Attachment A there remains the need to satisfy the requirements of 40 CFR Part 51.103(a) as to the number and types of copies of a SIP revision that must be submitted by the State to EPA. 40 CFR Part 51.103(a) says the State must provide "five hard copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office) of the plan to the appropriate Regional Office with a letter giving notice of such action. If the State submits an electronic copy, it must be an exact duplicate of the hard copy." Given the flexibility afforded in Part 51.103(a), compliance with its requirements can be achieved by each Regional Office having a record of an agreement between the Region and its States that the procedures outlined in Attachment A be followed when submitting a SIP revision. The Office of General Counsel (OGC) has advised that all ten Regions could easily pursue such an agreement with a presumptive letter from each Regional Administrator (RA) to the States in his/her Region, i.e. "We are agreeing to the following procedures for SIP submittals from you, and assume that you agree to these procedures unless we hear otherwise from you by [date]." Such letters would enclose this memorandum and its attachments. A model letter has been developed for use by all ten Regions.

The attachments to this memorandum have the concurrence of all ten Regional Air Division Directors, OAR and OGC. There is consensus among all ten Regions to implement these standardized procedures as quickly as possible via the RA letter described in the preceding paragraph. The ECOS/NACAA members of the National SIP Reform Workgroup were given the opportunity to provide feedback on these procedures and have endorsed their implementation as a significant step in our SIP reform efforts.

There will be additional efforts to address the remaining and any future issues concerning Regional consistency and communications with States. For example, the Regions will work together to develop procedures to:

1. Require the same level of detail and documentation in the technical portions of SIP submittals from all States.
2. Provide early, upfront and consistent guidance to all States regarding how to interpret and meet the requirements of implementation plans and other national rules.
3. Work with Multi-jurisdictional Organizations (MJOs) and Regional Planning Organizations (RPOs) that are performing the technical work (emission inventories, modeling, etc.), developing model rules, and designing SIP templates for their member States such that when the States submit their SIPs that include these

MJO/RPO work products there are no EPA requests for additional submissions and/or revisions late in the SIP submittal process.

The Regional members of the longstanding SIP Processing Work Group (which is separate from the National SIP Reform Workgroup) are contacts to whom questions regarding this memorandum may be addressed. They are as follows:

Region 1 – Donald Cooke
Region 2 – Paul Truchan
Region 3 – Harold Frankford
Region 4 – Nacosta Ward/Sara Waterson
Region 5 – Christos Panos
Region 6 – Carl Young
Region 7 – Jan Simpson
Region 8 – Kathy Dolan
Region 9 – Cynthia Allen/Lisa Tharp
Region 10 – Donna Deneen

cc: Regional Air Division Directors
Regional Air Program Managers
Regional Counsels for Air
OAR Office Directors in OAQPS, OTAQ, and OAP
OGC Air Office
ECOS/NACAA SIP Reform Work Group Members
(for distribution to full memberships)

Attachment A – Number and Types of Copies of SIP Submittals Required to be Submitted

Identified Constraints:

Currently the Federal Courts only recognize the “paper” (hard copy) of the rulemaking docket as the official docket when a SIP approval or disapproval is subject to litigation. The same is true when a Federal enforcement action is taken against a source for a SIP violation. Therefore, at this time, each EPA Regional Office must create and maintain a paper docket, including the State submittal, as well as the E-Docket to upload in the Federal Document Management System (FDMS) for each SIP-related rulemaking. It is also, therefore, necessary for the letter submitting the SIP revision to be a signed, dated paper original letter from the State official authorized to submit SIP revisions.

EPA also needs an electronic copy of the State submittal in searchable.pdf format to load into the FDMS. The Regions are prepared to generate this form of electronic copy in those instances when a State is unable to do so.

SIP Submittals:

1. One paper copy of the SIP revision submitted to EPA by an original, dated letter signed by the State official authorized to submit SIP revisions and addressed to either the Regional Administrator (RA) or the Director of the Air Division in a given Regional Office (provided the RA has delegated the authority to receive SIP revisions to the Air Division Director). Many of the administrative requirements for complete SIP revisions found at 40 CFR Part 51, Appendix V, 2.1, may be met by statements made in the submittal letters.
2. One electronic copy of the entire SIP revision along with the paper copy, preferably on disk, or otherwise made available to the Regional Office e.g., by e-mail, from a File Transfer Protocol (FTP) site or from the State website at the same time the paper copy is submitted. It makes it much easier for EPA if the electronic copy is made available in searchable.pdf format because that is the format required to be uploaded in to the FDMS.
3. In the original, dated paper version of the letter signed by the State official authorized to submit SIP revisions, there must be statement certifying that any electronic copy provided by the State to EPA whether by disk or otherwise made available to the Regional Office is an exact duplicate of the hard copy.
4. If the State is unable to provide an electronic copy in searchable.pdf format, the Regional Office can accept an electronic copy in image.pdf format, Microsoft Word, or Microsoft Excel and convert it to searchable.pdf format to load into the FDMS. Likewise, if a State only submits a paper copy and has no means of making an electronic copy available to EPA, the EPA Regional Office will scan the paper copy and create an electronic copy in searchable.pdf format to load into the FDMS.

5. Even for the single official paper copy identified under number 1. above, States do not have to submit paper copies of large data files such as ambient air quality data, emissions inventories, model input files, etc. if the State puts such supporting data files on a disk (or disks) and submits the disk along with the paper copy. Such disks should be submitted with the official paper copy in order for the official SIP submittal to be complete. EPA cannot "complete" the official submittal for the State by accessing such data files from an e-mail, FTP or website.
6. "Model" SIP submittal letters are available from the Regional Offices.

Caveats:

1. EPA is able to "retrieve" the "unofficial" electronic copy via e-mail, from an FTP or a state website only because the State submitted the official paper copy. Whatever material EPA receives via e-mail or accesses from an FTP or website is not the official submittal.
2. The State should identify any copyrighted material in its submittal as EPA does not place such material on the web when creating the E-Docket for loading into FDMS.
3. States are urged not to include any material considered Confidential Business Information (CBI) in their SIP submittals. In rare instances where such information is necessary to justify the control requirements and emission limitations established by the SIP revision (e.g., for a source-specific SIP revision), States should confer with their Regional Offices prior to submittal and must clearly identify such material as CBI in the submittal itself. EPA does not place such material in either the paper docket or the web when creating the E-Docket for loading into FDMS. However, where any such material is considered emissions data within the meaning of Section 114 of the CAA, it cannot be withheld as CBI and must be made publically available.

Notes: The use of STAG (105) funds by States to purchase the software/equipment needed to create electronic copies in searchable.pdf format is an acceptable expense, and many States have opted to do so. A State may indicate such purchases in the appropriate portion of its 105 grant application.

Future Activities: EPA is committed to work with the Department of Justice to continue to pursue options for reducing and eventually eliminating the paper (hardcopy) submittals of SIP revisions in favor of electronic submittals.

Attachment B – Public Notices/Hearings Required by Sec. 110 of the CAA

Identified Constraints:

As explained below, EPA has made significant reforms in the SIP process regarding public notices and public hearings. However, States may implement these reform opportunities only to the extent allowed by State law because a basic requirement for an approvable SIP revision is that it was developed and adopted by the State agency in accordance with such law and its legal authority.

Public/Notice Hearing:

1. The public notice and public hearing requirements for SIP revisions are found at 40 CFR Part 51.102. These Federal regulations indicate that the State must afford the opportunity to submit written comments and allow the public to request a public hearing either by announcing a hearing in the notice for comments or by providing the opportunity to request a hearing in that notice. Each State must have legal authority setting out its public notice procedures and EPA has already approved these procedures as meeting the minimum requirements of the CAA.
2. EPA has determined that the term “prominent advertisement” as used in 40 CFR Part 51 when referring to the public notice required by Section 110 of the CAA for SIP revisions is media neutral. The State may continue the use of newspapers to publish these notices or may opt to publish such notices elsewhere so long as the State has determined that the public would have routine and ready access to such alternative publishing venues. States may also choose a combination approach whereby a short (and presumably less expensive) notice is published in a newspaper that informs the public where to access the complete public notice that satisfies all of 40 CFR Part 51 requirements.
3. EPA recognizes that many States use a single public notice and hearing to satisfy their own State adoption process requirements, Section 110 of the CAA and 40 CFR Part 51. This has long been and continues to be an acceptable practice. However, in order to satisfy the CAA and 40 CFR Part 51, the notice must clearly state that the regulations and/or documents that are the subject of the public notice will be submitted to the United States Environmental Protection Agency to be included in or to revise the State Implementation Plan required by the Clean Air Act and should identify the CAA requirements the revisions are intended to meet. Unless the public notice includes this statement, Section 110 of the CAA has not been satisfied.
4. The regulations provide that any public hearing must be announced in a public notice at least 30 days prior to the hearing, and that notice must include the date, place, and time of the public hearing. If the State receives a request for a public hearing, it must hold the already scheduled hearing as described in the original public notice or schedule a public hearing through a separate notice. To avoid having to re-publish a second notice to provide 30 days advance notice of a public hearing, States are strongly encouraged to schedule a public hearing in the original public notice. Under 40 CFR part 51.102(a), the

State may cancel the public hearing if no request for a public hearing is received during the 30-day notification period, so long as the original public notice announcing the 30-day notification period clearly states: *If no request for a public hearing is received, the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.*

5. Pursuant to the regulations, the entire SIP revision must be made available for public review and comment including supporting technical materials and other information the State has relied upon or intends to rely upon to justify the approvability of the SIP revision.

Caveats:

As noted above, States often publish a single public notice and hold a single public hearing to satisfy State requirements for adoption of State rules/regulations as well as Section 110 of the CAA and 40 CFR Part 51 requirements. This usually means that the public notice and hearing are held on a proposed state rule/regulation. Two important points:

1. There is no independent Federal requirement that the public notice and hearing required by Section 110 of the CAA or 40 CFR Part 51 be held on proposed State regulations. However, 40 CFR Part 51, Appendix V, 2.1 (e) requires that the State must have followed all of the procedural requirements of the State's law and constitution in conducting and completing adoption/issuance of the SIP revision. So if State law requires public notice and hearing at the proposed stage of regulation adoption, then public notice must be given and hearing must be held on proposed regulations to satisfy 40 CFR Part 51.

EPA is aware that under State law certain types of SIP regulations are not required to undergo public notice and hearing procedures as part of the State adoption process. In such instances, the public notice and hearing requirements of 40 CFR Part 51.102 may be held on fully adopted State regulations. The Federal requirement for public notice and hearing is to inform the public that the SIP is being revised and allow for comment as to whether the State regulations satisfy a specific obligation under the CAA.

2. The Federal requirement for public notice and hearing is to inform the public that the State intends certain regulations and other actions to fulfill specific CAA requirements and thus to revise the SIP. So if a regulation is significantly changed by the State between the time of proposal and final adoption, it may be necessary for the State to conduct the public participation procedures required by 40 CFR Part 51.102 on the final regulations being submitted as a SIP revision.

Notes: EPA Regional Offices will provide "model" public notices for States to use satisfy Section 110, and 40 CFR Part 51.102 upon request.

Attachment C – Determinations of Attainment by an Area's Attainment Date v. Clean Data Determinations & Redesignation Requests and Maintenance Plans

Introduction: The issue of Redesignations v. Clean Data Determinations and what a State must provide to an EPA Regional Office for each type of submittal has been raised by the States to EPA for both clarification and Regional consistency. These are very different types of actions and achieve different results as explained in this Attachment.

There is also a distinction between a Determination of Attainment by an area's attainment date and a Clean Data Determination which is explained below.

The Distinction between a Determination of Attainment by an Area's Attainment Date and a Clean Data Determination

It is important to distinguish between two different types of attainment determinations that EPA makes for areas that are designated nonattainment. Both types require notice-and-comment rulemaking.

- (1) Determinations of Attainment by an area's attainment date, and
- (2) Determinations of Attainment for purposes of suspending the State's obligation to submit certain planning SIPs linked to attainment (so-called Clean Data Determinations).

With respect to Type 1, the Clean Air Act requires EPA to determine whether a nonattainment area has attained the standard as of its applicable attainment date. These Determinations of Attainment provide a historical snapshot -- they evaluate attainment only as of an area's attainment deadline, and are issued to comply with Section 181(b)(2) for ozone and Sections 172 and 179 for PM_{2.5}. Determinations of Attainment by an attainment deadline are separate and independent of the second type of attainment determinations, Clean Data Determinations, which are not compelled by the CAA.

With respect to Type 2, Clean Data Determinations originated in EPA's Clean Data Policy, but are now linked to EPA regulations. These determinations invoke either 40 CFR Part 51.918 for ozone or 51.1004(c) for PM_{2.5}. Unlike determinations by an attainment deadline, Clean Data Determinations are subject to revision based on changes in air quality, and must be sustained by continuing attainment. They function to suspend a State's obligation to submit certain attainment-related planning SIP obligations for a designated nonattainment area. The suspension continues until EPA determines that a violation has occurred, or EPA redesignates the area from nonattainment to attainment.

These two types of determinations are conceptually and legally distinct. They arise from different authorities and result in different consequences. However, they both address air quality and can be based on the same or overlapping years of air quality data.

Clean Data Determinations - See 40 CFR Part 51.918 for ozone and 51.1004(c) for PM2.5.

Criteria: Either the State may request or EPA may, on its own, initiate the rulemaking to make a Clean Data Determination. A Clean Data Determination requires a demonstration that what is needed is for the most recent 3 years of complete air quality data have been entered into AIRS-AQS, have been quality assured, and indicate attainment. In addition, the air quality data available to date (meaning as of the date of the final rulemaking action), even if not complete, should be consistent with continued attainment. As the determination of what is complete and incomplete data as of the time of final rulemaking differs from criteria pollutant to criteria pollutant depending upon the form of the standard, the Regional Office will work closely with the State to ensure that the available data at the time of final rulemaking is considered consistent with continued attainment.

The EPA Regional Office will conduct the notice and comment rulemaking to make the Clean Data Determination. The key issues in the rulemaking action are the validity of the ambient air quality data themselves and the location and operation of the monitor(s) from which those data have been collected in order to ensure that the data are complete, quality assured and representative of the designated nonattainment area.

Results: Upon EPA's promulgation of a final Clean Data Determination for a nonattainment area, the obligation for the State to submit for such an area the attainment demonstration, associated reasonably available control measures, reasonable further progress plan, contingency measures, and other attainment-related planning requirements is suspended until such time as the area is redesignated to attainment, at which time the requirements no longer apply; or until EPA determines that the area has violated the NAAQS, at which time the obligations would again apply.

The suspension of the planning requirements saves the State and EPA the resources involved in developing, adopting, submitting, evaluating, and performing rulemaking for unneeded planning requirements as SIP revisions.

The Clean Data Determination serves as notice to the public that the nonattainment area's air quality meets the NAAQS.

Caveats: A Clean Data Determination does not have the effect of a redesignation to attainment. The area remains designated nonattainment and nonattainment area requirements such as New Source Review (NSR) and conformity continue to apply until the State submits a request for redesignation including the CAA-required maintenance plan and EPA approves them.

If a State has an area for which a Clean Data Determination has been made and the State has submitted or submits SIP revisions for the suspended planning requirements, it may inform EPA that it wants these SIPs approved (for example, to enable the State to submit a redesignation request). Otherwise the State may opt to withdraw the SIPs submitted for the suspended requirements. Prior to requesting withdrawal, the State should consider the fact that it may want the mobile budgets in an attainment demonstration or RFP plan approved. Where the State does not withdraw any such SIP submissions, EPA remains obligated to act on them.

Requests for Redesignations and Maintenance Plans – See Section 107(d)(3)(E)

Introduction: To redesignate an area from nonattainment to attainment is an important action that demonstrates success in the air quality planning process. Redesignation acknowledges not only that an area has met the relevant air quality standard, but also that the State has satisfied relevant requirements and shown that the area can continue to meet the standard for the decade following redesignation. EPA recognizes that the nonattainment designation of an area can affect its ability to attract economic development. Once an area is redesignated from nonattainment to attainment, it is likely better positioned to attract new and expanding businesses and industry. When an urban area is redesignated from nonattainment to attainment, the city may move up in the ranking of “Most Livable Cities” which may help it attract new residents and retain its existing population. Given these considerations, EPA is committed to work closely with States in the preparation and submittal of redesignation requests and maintenance plans and to make this work a priority so that submittals can be evaluated quickly and effectively. That said, individual Regions and States are encouraged to confer and determine which SIP revisions are the highest priorities as certain SIP revisions may be needed to avoid findings, halt sanctions/FIP clocks, respond to SIP calls, and/or be necessary to be approved in order for an area to be eligible for redesignation from nonattainment to attainment.

Criteria: Requests to redesignate an area from nonattainment to attainment and the submittal of the CAA-required maintenance plans as SIP revisions are State-initiated actions. EPA approves the redesignations in 40 CFR Part 81 and the maintenance plans as SIP revisions in 40 CFR Part 52. There are five statutory requirements that must be met for EPA to approve the redesignation of an area from nonattainment to attainment:

1. EPA determines that area has attained the NAAQS (three years of complete quality assured data in AIRS-AQS that show attainment);
2. EPA has fully approved the area’s applicable implementation plan (i.e., the plan developed for the particular nonattainment pollutant) under section 110(k) of the CAA;
3. EPA determines the improvement in the area’s air quality is due to enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent enforceable reductions;
4. The area has a fully approved maintenance plan meeting section 175A of the CAA; and
5. The State has met all of the requirements applicable (for purposes of redesignation) to the area under Section 110 (the applicable infrastructure SIP requirements) and Part D (the applicable nonattainment area SIP elements).

SIP Submittals: A Section 175A maintenance plan is a SIP revision and must meet all of the administrative requirements of Part 51 and Part 51 Appendix V for a complete submittal.

Under the CAA, a Section 175A maintenance plan must provide for the maintenance of the NAAQS in the area for at least 10 years after the redesignation; this means for at least 10 years from EPA’s final rule approving the redesignation. As the CAA provides up to 18 months for EPA to complete rulemaking on a redesignation request, the maintenance plan at the time of submittal should provide for attainment for at least 11 years and six months. EPA recommends to States that it provide for attainment for 12 years from the time of formal submittal to allow for completing the redesignation rulemaking processes.

When submitting a request for redesignation, the State does not have to re-submit SIP revisions it has already submitted to EPA to satisfy section 110 and Part D of the CAA. In its submittal of the redesignation request it may cite to the submittal dates of those SIP revisions. For any SIP revisions that have been already been approved, it may provide the dates and Federal Register citations of the EPA approvals.

When evaluating a redesignation request and maintenance plan to determine whether or not all Section 110 and Part D SIP requirements have been met, EPA does not require that the area have a fully approved nonattainment pre-construction NSR permitting program for new major sources and major modifications, if the State demonstrates that the area can continue to maintain the standard with the Prevention of Significant Deterioration (PSD) program. Once an area is redesignated from nonattainment to attainment the Part C requirements for Prevention of Significant Deterioration apply for the pre-construction permitting of new major sources and modifications.

The contingency measures of a Section 175A maintenance plan, unlike the contingency measures of an attainment demonstration plan or reasonable further progress (RFP) plan, may not be implemented "early" by the State. These are the contingency measures that the State will implement if the maintenance plan's triggers for such measures occur (e.g., emissions projections exceed the levels projected in the plan or the area violates the NAAQS). These contingency measures and their schedule for implementation need to be clearly identified in the maintenance plan.

How much documentation is necessary for the maintenance plan's "maintenance demonstration" of maintenance for 10 years after the EPA's final approval of the redesignation is dependent upon the form of the "maintenance demonstration." For example, if growth projections are used to "grow" a recently already approved SIP emission inventory (or inventories where multiple precursors are involved) for the area, it may not be necessary to resubmit all of the documentation for that emission inventory as part of the maintenance plan. In such cases the State may be able to cite to the submittal and/or approval of that emissions inventory to EPA. However, the State will still need to explain and justify their growth projections and any other factors applied to that inventory.

The maintenance plan for areas where RFP plans and attainment demonstrations have been approved will also have to identify mobile budgets. For other areas, the maintenance plan will still need to include provisions for how conformity will be done after the area is redesignated.

Effects of a Redesignation: Once redesignated to attainment, the area's applicable SIP's NSR provisions for minor sources apply and the requirements of the Prevention of Significant Deterioration (PSD) program apply for the pre-construction permitting of new major sources and major modifications. The conformity requirements applicable in the attainment area will then apply as outlined in the approved maintenance plan including any applicable mobile budgets.

In the event the area violates the NAAQS after redesignation, the area is not immediately subject to redesignation back to nonattainment. Rather the maintenance plan's contingency measures are to be implemented and other actions taken by the State to promptly correct the violation (e.g. non-compliance of a source or sources) and address the situation.

Attachment D – The Use of Letter Notices

Constraints: Because the use of Letter Notices by EPA to approve SIP revisions does not provide for public comment, the use of such letters is limited to those types of SIP revisions where “common sense” would indicate that the public and regulated sector would have no interest in commenting on EPA’s approval.

EPA’s rulemaking procedures for SIP revisions are governed by the Federal Administrative Procedures Act (APA). While that statute does not include provisions for Letter Notices to do SIP approvals, EPA has been using Letter Notices to approve a very narrow range of SIP revisions because such actions fit under the good cause exemption of the APA’s notice and comment requirements.

Even purely administrative SIP revision approvals that do not make any substantive changes to SIP requirements do amend the CFR, namely the State’s Subpart of 40 CFR Part 52.

Accordingly, the Office of the Federal Register would have to be consulted before additional types of SIP revisions would become candidates for approval by Letter Notices.

Types of SIP Revisions for Which Letter Notices May be Used by EPA:

As first described in the 1989 SIP Processing Reform notice (54 FR 2218), under the Letter Notice procedure, EPA sends a letter to the affected states and parties rather than undertaking a notice-and-comment rulemaking. Use of Letter Notice is limited to truly insignificant SIP actions. No notice will be published in the Federal Register prior to sending final letter notice approvals to the State and affected parties. The letter to the State will be EPA’s only and final action approving such minor SIP revisions.

The Agency periodically publishes a summary list of all Letter Notice actions in the Federal Register to keep the general public informed of SIP matters. The effective date of the Letter Notice approvals is the date of the letter sent to the State, not the date of the subsequent summary Federal Register notice. Letter Notice approvals do, however, remain subject to judicial review until sixty days after the date of the summary Federal Register notice is published.

Categories of SIP actions appropriate for letter notice include:

1. Re-codification involving no substantive changes;
2. Minor technical amendments or error corrections;
3. Typographical corrections;
4. Address changes; and
5. Similar non-substantive matters

Caveats: The SIP revisions submitted by states that are eligible for approval by EPA by Letter Notice must still meet the administrative requirements for SIP submittal of 40 CFR Part 51.102 and Appendix V

Future Activities: The members of the SIP Reform Workgroup will continue to pursue whether additional types of non-substantive SIP revisions may be added to the list of actions appropriate for Letter Notice. The Workgroup will also explore whether to modify 40 CFR Part 51.102 to provide less to provide less rigorous notice and comment requirements for such non-substantive SIP revisions.

Plan to Complete Regulatory SIP Revisions in February 2011

| Rules Adopted | Rules Effective | Chapters Submitted as SIP Revisions | Comments | Submit Date |
|---------------|-----------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 6/9/2006 | 12/13/2006 | 6,17,App II, III | | 2/1/2011 |
| 8/17/2007 | 2/5/2008 | 7 | All other changes were repealed - Mercury, OSWI | 2/1/2011 |
| 8/17/2007 | 2/6/2008 | 2,24,43 | All other changes adopted into revised SIP for GHG purposes. Ch 2 is ethanol plant chg; Ch 43 needs to be adopted before or simultaneously with RH SIP. | 2/1/2011 |
| 12/7/2007 | 2/16/2008 | 5 | | 2/8/2011 |
| 7/1/2008 | 8/18/2008 | 4 | Other changes were repeal of Mercury, OSWI | 2/8/2011 |
| 12/4/2009 | 7/3/2010 | 18, 22,30 | Ch 1 submitted with PSD revision prior to GHG submittal Ch 18 changes will update our 111(d) plan for landfills Ch 22,30 changes relate to air curtain incinerators | 2/8/2011 |
| 12/1/2010 | 1/9/2011 | | GHG changes, already submitted for SIP revision | done |

Note: Chapters 18 and 26-28 are not included in the SIP except for the 111(d) plan in Chapter 18.

Appendix

Nebraska Asbestos Program Performance Data

| LLCHD | FY-09* | | | | | FY-10 | | | | |
|---------------|--------|----|----|----|-------|-------|----|----|----|-------|
| | Q1 | Q2 | Q3 | Q4 | Total | Q1 | Q2 | Q3 | Q4 | Total |
| Notifications | | | | | | 11 | 11 | 13 | 15 | 50 |
| Inspections | | | | | | 11 | 12 | 28 | 11 | 62 |
| Informal Enf. | | | | | | 0 | 0 | 0 | 0 | 0 |
| Formal Enf. | | | | | | 0 | 0 | 0 | 0 | 0 |

*Note: Because EPA intended to perform a detailed on-site review at LLCHD, we did not request program performance data for FY-09. Subsequently, when we expanded the scope of the program review to include the entire state, we requested data for FY-09 and FY-10; however, we chose not to burden LLCHD with the request for additional data.

| OAQC | FY-09 | | | | | FY-10 | | | | |
|---------------|-------|----|----|----|-------|-------|----|----|----|-------|
| | Q1 | Q2 | Q3 | Q4 | Total | Q1 | Q2 | Q3 | Q4 | Total |
| Notifications | 125 | | | | | 118 | | | | |
| Inspections | 16 | | | | | 19 | | | | |
| Informal Enf. | 0 | 0 | 5 | 3 | 8 | 0 | 3 | 0 | 1 | 4 |
| Formal Enf. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| NDHHS | FY-09 | | | | | FY-10 | | | | |
|---------------|-------|-----|-----|----|-------|-------|-----|-----|-----|-------|
| | Q1 | Q2 | Q3 | Q4 | Total | Q1 | Q2 | Q3 | Q4 | Total |
| Notifications | 180 | 281 | 178 | 80 | 719 | 78 | 223 | 421 | 425 | 1147 |
| Inspections | 88 | 101 | 96 | 96 | 381 | 80 | 102 | 132 | 120 | 434 |
| Informal Enf. | 2 | 2 | 2 | 2 | 8 | 4 | 3 | 3 | 4 | 14 |
| Formal Enf. | 1 | 1 | 2 | 0 | 4 | 1 | 0 | 1 | 5 | 7 |